



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): 2022-0066

Date of Panel Review: 13-Jun-2024 1:00 PM (EDT)

Board Members Present: [REDACTED]

Case Findings:

Allegation 1 and 2: Not Sustained

Allegation 3 to 12: Exonerated

Allegation 13 and 14: Sustained

Disciplinary Recommendation:

1. Officer [REDACTED] - 10- day suspension

2. Officer [REDACTED] - 30-day suspension.

Dissenting Opinion/Comment:

Board member [REDACTED] would vote to sustain Allegations 1 and 2 on the basis that there was no valid reason for the traffic stop. [REDACTED] does not believe the officer's explanation for why the stop occurred.



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.



Officer Name- Allegation # 1:

Officer [REDACTED] Equitable Policing (G.O. 502): [REDACTED] and [REDACTED] were racially profiled by Officer [REDACTED] and the stop was motivated by bias.

- **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**
-

Officer Name- Allegation # 2:

Officer [REDACTED] Equitable Policing (G.O. 502): [REDACTED] and [REDACTED] were racially profiled by Officer [REDACTED] and the stop was motivated by bias.

- **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**
-

Officer Name- Allegation # 3:

Officer [REDACTED] Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he drew his firearm on [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**
-

Officer Name- Allegation # 4:

Officer [REDACTED] Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he drew his firearm on [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**



Officer Name- Allegation # 5:

Officer [REDACTED] Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he drew his firearm on [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**
-

Officer Name- Allegation # 6:

Officer [REDACTED] Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he drew his firearm on [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**
-

Officer Name- Allegation # 7:

Officer [REDACTED] Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he detained [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**
-

Officer Name- Allegation # 8:

Officer [REDACTED] Searches (G.O. 415): Officer [REDACTED] [REDACTED] unwarranted search of [REDACTED] [REDACTED] was unlawful.

- **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**



Officer Name- Allegation # 9:

Officer [REDACTED] Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he detained [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**
-

Officer Name- Allegation # 10:

Officer [REDACTED] Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he detained [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**
-

Officer Name- Allegation # 11:

Officer [REDACTED] Searches (G.O. 415): Officer [REDACTED] [REDACTED] unwarranted search of [REDACTED] was unlawful.

- **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**
-

Officer Name- Allegation # 12:

Officer [REDACTED] Searches (G.O. 415): Officer [REDACTED] [REDACTED] unwarranted search of [REDACTED] was unlawful.

- **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**



Officer Name- Allegation # 13:

Officer [REDACTED] Altering, Delaying or Falsifying Reports (Rule 5.1): Officer [REDACTED] knowingly entered false information on his Incident Report.

- **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**
-

Officer Name- Allegation # 14:

Officer [REDACTED] Altering, Delaying or Falsifying Reports (Rule 5.1 (c)): Officer [REDACTED] knowingly entered false information on his Use of Force Report.

- **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 - Deviated downward to 30-day suspension.**



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

On July 17, 2022 at 2:35 AM, Officer [REDACTED] and Officer [REDACTED] initiated a traffic stop on a gray 2013 Dodge Dart (Allegation 1, Allegation 2). According to Officer [REDACTED] Incident Report (“IR”), officers observed the vehicle driving without headlights on near East Avenue and Lawrence Street. The report states that officers observed two men in the vehicle, both wearing black ski masks, though no masks were recovered and none can be seen on body-worn camera footage.

Officer [REDACTED] approached the driver side of the vehicle and spoke to the driver, [REDACTED] [REDACTED]. Officer [REDACTED] asked [REDACTED] [REDACTED] where he was traveling to and from where. Officer [REDACTED] approached the passenger side of the vehicle and spoke to the passenger, [REDACTED] [REDACTED]. At 2:36 AM, Officer [REDACTED] observed a handgun on the front passenger floorboard in vehicle. Officer [REDACTED] then pointed his department issued firearm at [REDACTED] [REDACTED] and commanded him not to move. (Allegation 3). At the same time, Officer [REDACTED] pointed his department issued firearm at [REDACTED] [REDACTED] and commanded him not to move (Allegation 5).

As this unfolded, other officers arrived on the scene and aided in the detention of [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. More specifically, Officer [REDACTED] drew his weapon and pointed it at [REDACTED] [REDACTED] (Allegation 4); and Officer [REDACTED] drew his weapon and pointed it at [REDACTED] [REDACTED] (Allegation 6).

Officer [REDACTED] then instructed [REDACTED] [REDACTED] to keep his hands up, took a hold of [REDACTED] [REDACTED] right wrist, and pulled it back against the vehicle (Allegation 7). Officer [REDACTED] who was standing behind Officer [REDACTED] with his weapon drawn, holstered his weapon and took control of [REDACTED] [REDACTED] right wrist from Officer [REDACTED]. Officer [REDACTED] then moved to the other side of the vehicle to assist officers with taking [REDACTED] [REDACTED] into custody. Officer [REDACTED] instructed [REDACTED] [REDACTED] to exit the vehicle, and with Officer [REDACTED] leading him by the arm, he exited the vehicle on his own. Officer [REDACTED] then handcuffed [REDACTED] [REDACTED] with the assistance of Officer [REDACTED] [REDACTED]. Officer [REDACTED] then searched [REDACTED] [REDACTED] pockets before placing him in the back of a patrol car (Allegation 8).

Concurrently, Officer [REDACTED] pulled [REDACTED] [REDACTED] from the passenger-side of the vehicle and onto the sidewalk, commanding him to get down (Allegation 9). With [REDACTED] [REDACTED] positioned on his stomach,



Officer [REDACTED] then place his knee on the center of [REDACTED] back and held his right forearm so that Officer [REDACTED] could place [REDACTED] in handcuffs (Allegation 10). Officer [REDACTED] and Officer [REDACTED] searched [REDACTED] pocket from 2:36:46 AM until 2:38:39 AM and helped [REDACTED] to his feet. (Allegation 11, Allegation 12).

During his search of [REDACTED] Officer [REDACTED] removed [REDACTED] wallet from his pocket and placed it on the ground. Officer [REDACTED] retrieved the wallet, searched through it and found [REDACTED] pistol permit. Officer [REDACTED] confirmed that [REDACTED] pistol permit was valid and the serial number listed on the permit matched the handgun found in the vehicle.

In addition to the handgun on the floorboard, further search of the vehicle turned up an additional weapon. However, after Officer [REDACTED] discussed the matter with responding Sergeant [REDACTED] it was determined that it would not be appropriate to charge [REDACTED] with criminal weapons possession.

[REDACTED] and [REDACTED] were then released after being in police custody for sixty two (62) minutes [REDACTED] was given a ticket for driving without headlights and [REDACTED] belongings were returned.

The officers completed several written reports to document incident. For instance, Officer [REDACTED] completed an Incident report following the incident on 08/04/22 (Allegation 13); and Officers [REDACTED] and [REDACTED] each completed a Use of Force report immediately following the incident (Allegation 14).

[REDACTED] the reporter, alleged that officers used excessive force, and that the incident was motivated by racial bias.

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]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

INVOLVED INDIVIDUALS

Name	Age	Sex	Race/ Ethnicity
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



ALLEGATIONS

1	Officer [REDACTED]	<i>Equitable Policing (G.O. 502):</i> [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were racially profiled by Officer [REDACTED] and the stop was motivated by bias.
2	Officer [REDACTED]	<i>Equitable Policing (G.O. 502):</i> [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were racially profiled by Officer [REDACTED] and the stop was motivated by bias.
3	Officer [REDACTED]	<i>Use of Force (G.O. 337):</i> Officer [REDACTED] used show of force when he drew his firearm on [REDACTED] [REDACTED]
4	Officer [REDACTED]	<i>Use of Force (G.O. 337):</i> Officer [REDACTED] used excessive force when he drew his firearm on [REDACTED] [REDACTED]
5	Officer [REDACTED]	<i>Use of Force (G.O. 337):</i> Officer [REDACTED] used excessive force when he drew his firearm on [REDACTED] [REDACTED]
6	Officer [REDACTED]	<i>Use of Force (G.O. 337):</i> Officer [REDACTED] used excessive force when he drew his firearm on [REDACTED] [REDACTED]
7	Officer [REDACTED]	<i>Use of Force (G.O. 337):</i> Officer [REDACTED] used excessive force when he detained [REDACTED] [REDACTED]
8	Officer [REDACTED]	<i>Searches (G.O. 415):</i> Officer [REDACTED] [REDACTED] unwarranted search of [REDACTED] [REDACTED] was unlawful.
9	Officer [REDACTED]	<i>Use of Force (G.O. 337):</i> Officer [REDACTED] used excessive force when he detained [REDACTED] [REDACTED]
10	Officer [REDACTED]	<i>Use of Force (G.O. 337):</i> Officer [REDACTED] used excessive force when he detained [REDACTED] [REDACTED]
11	Officer [REDACTED]	<i>Searches (G.O. 415):</i> Officer [REDACTED] [REDACTED] unwarranted search of [REDACTED] [REDACTED] was unlawful.
12	Officer [REDACTED]	<i>Searches (G.O. 415):</i> Officer [REDACTED] [REDACTED] unwarranted search of [REDACTED] [REDACTED] was unlawful.
13	Officer [REDACTED]	<i>Altering, Delaying or Falsifying Reports (Rule 5.1):</i> Officer [REDACTED] knowingly entered false information on his Incident Report.
14	Officer [REDACTED]	<i>Altering, Delaying or Falsifying Reports (Rule 5.1):</i> Officer [REDACTED] knowingly entered false information on his Use of Force Report.

INVESTIGATION

Reporter [REDACTED] [REDACTED] filed a complaint with the Police Accountability Board on July 18, 2022.

The Police Accountability Board notified the Rochester Police Department of its investigation and requested corresponding documents on May 1, 2023.

In response, the Rochester Police Department provided twenty-six (26) body-worn camera files from twelve (12) officers, two (2) Computer Aided Dispatch (CAD) documents, one Incident Report, five (5) Use of Force Reports and nine (9) files related to the traffic ticket issued to [REDACTED] [REDACTED]



On November 30, 2023, the PAB made a 2nd requested for evidence and clarified information from the RPD about video evidence provided. The PAB received a response on December 1, 2023 providing a property custody report. The response also stated that there were not any; technician reports or photo reports. RPD was unable to provide blue light camera data over a year old that had not stored or downloaded, and the total number or video files and total number of accounts listed on the redaction log matched what was provided to PAB.

On December 6 2023, the PAB made an additional request, which sought to clarify information from the RPD about video evidence provided. The PAB received a response on December 7, 2023 which stated that three officers listed on the BWC redaction log without any files turned over to the PAB are confirmed as faces seen somewhere in the BWC footage, however, their involvement can not be confirmed – there is no BWC footage or documentation for the three officers.

On November 28, 2023 an attempt was made to contact the reporter, however; the number provided was not operational. An email was then sent, requesting additional information and updated phone number.

On April 16, 2024, the case was assigned to a different investigator.

On April 29, 2024, another attempt was made to reach the reporter via phone, and the number was still not operational. This investigator attempted to follow up via email and received message that "The recipient's inbox is out of storage space. This message hasn't been delivered". On May 5, 2024, a letter was then sent via USPS, and no response has been received.

On May 23, 2024, a final Source of Information (SOI) was sent to RPD requesting documents related to a robbery, which is alleged to have occurred immediately preceding the events of this research. RPD responded on May 29, 2024, and sent BWC footage from four (4) officers, a CAD job card and an incident report. After reviewing BWC footages and CAD card this investigator can confirm Officer [REDACTED] and [REDACTED] were handling a robbery call near the incident location, minutes before the events of this investigation.

Involved officers disciplinary records were requested, but no response was given. Officer [REDACTED] has PAB sustained misconduct findings relating to PTN 2022-0162 for violations of General Orders 335 II(b), 335 II(c), 335 III A 4b), 350 IV (a), 350 IV(b), and 575 3(b), as well as RPD Rules and Regulations 2.14, 4.1(a), 4.1(b), 4.2(a), and 4.2(c).

EVIDENCE PROVIDED

Evidence	Description	Provided by	Filename
Intake Report	[REDACTED] initial report	[REDACTED]	i-Sight Case 2022-0066 Overview
Incident Report	Incident Report completed by Ofc. [REDACTED] on 08/03/2022	Rochester Police Department	Incident Report, Officer cor [REDACTED], Supervisor cor [REDACTED] Merged By COR [REDACTED].pdf



Use of Force Reports	Use of Force Report completed by Officers present at the incident	Rochester Police Department	S-SharePoint File Transfer - IA PRO SRR - All Documents
CAD card	Computer Aided Dispatch (CAD) document showing call from officers to dispatch about traffic stop	Rochester Police Department	Computer Aided Dispatch (CAD)
BWC Pictures and Videos	Photos and Videos taken from officers body worn cameras	Rochester Police Department	S-SharePoint File Transfer - BWC - All Documents
Traffic Ticket Documentation	Documentation regarding the traffic citation given to [REDACTED]	Rochester Police Department	S-SharePoint File Transfer - TRACS - All Documents
Property Custody Report	Property Custody Report for the recovered handgun that was not listed on [REDACTED] permit	Rochester Police Department	Property Sheet.pdf
BWC FOIL Request Redaction log	Fifth teen officers on redaction log. Involvement unknown.	Rochester Police Department	RPD BWC Redaction log (Voluminous Officers).pdf

EVIDENCE DENIED

Evidence	Description	Reason Declined
Personnel and Disciplinary Records of the Officers involved	Disciplinary record request for all involved officers	No response given.
Blue light camera footage	Camera located at 20 Lawrence St from 02:25 am to 3:30am on 07/17/2022	Over a year old, video not available anymore as it purges - unless downloaded in C3.

APPLICABLE RULES & LAWS

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.



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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.

D. 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

II. DEFINITIONS

Show of Force - Brandishing (also known as pointing or displaying) a chemical agent, firearm, electronic control weapon, or impact weapon at a person.

Physical Injury – Impairment of physical condition or substantial pain.

Resistance – non-compliance with a Member’s lawful commands.

Special Circumstances – May include but not limited to: close proximity to weapons, special knowledge, injury/exhaustion of officer, ground fighting, or number of people fighting.

Objectively Reasonable – A standard used to judge an officer’s actions. Under this standard a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight and based on the totality of the facts that are known to that officer at the time that the force was used.

Necessary Force – The amount of force used is objectively reasonable and proportional to effect the lawful purpose intended when no objectively reasonable alternative to the use of force appears to exist.



Proportional – The level of force applied must correspond to the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to apply.

Totality of the Circumstances – Those circumstances that would lead a reasonable officer to believe that he/she is encountering a situation that may require the use of force. Circumstances to consider may include the nature of the offense, seriousness of the offense, size and strength of the person, number of persons, availability of weapons, mental instability of the person, availability of other force options, training and experience of the Member and person, environmental factors, presence of bystanders, and availability of back up and specialized units. This list is not meant to be exhaustive.

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.

E. Members using force must continually assess the situation and adjust the use of force as necessary. As a person's resistance decreases, Members shall decrease their use of force accordingly.

F. Whenever safe and feasible to do so, prior to using force, Members should provide verbal commands. Members should defer using force for an objectively reasonable amount of time to allow the person to comply with the command.

G. Members must act with due regard for the safety of all persons during any use of force.

H. Members shall use de-escalation techniques and tactics, when it is safe and feasible to do so, to prevent and minimize the need to use force and to increase the likelihood of securing a



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person's voluntary compliance with police instructions. Members should refer to RPD's De-Escalation policy, G.O. 575.

I. Members have an affirmative duty to intervene to prevent or stop any Member from using unreasonable force or otherwise acting contrary to law or RPD policy. Members should refer to RPD's Duty to Intervene policy, G.O. 336.

J. After a use of force, Members shall render medical assistance consistent with their training as follows:

1. When safe and feasible to do so, Members shall immediately evaluate the need for medical attention for the person upon whom force was used. Members shall request medical assistance without delay for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, is suicidal or encountering a mental health crisis, or who was rendered unconscious.

2. Any person who is exposed to a Conducted Electrical Weapon ("CEW") application and has apparent injuries or complains of injury, or is unconscious or semi-conscious due to alcohol or drug consumption must be transported to a hospital to be seen by a medical professional for treatment.

3. Members are expected to document whether they render aid to any individual in a Subject Resistance Report. Members are required to follow RPD's Subject Resistance Report policy, G.O. 335. K. PDS will conduct a yearly training on use of force via in-service and/or roll call.

VI. USE OF LESS LETHAL FORCE OPTIONS

H. Show of Force

1. Any member who brandishes (also known as pointing or displaying) a chemical agent, firearm, electronic control weapon, or impact weapon at a person, shall document such action in accordance with General Order 335 (Subject Resistance Report).

VII. FAILURE TO FOLLOW POLICY

A. Members who fail to respond to resistance in accordance with departmental policies and the law may be subjected to departmental discipline, criminal prosecution, and/or civil liability.

GENERAL ORDER 415: SEARCHES

I. DEFINITIONS

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

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

- (1) the informant was reliable; and,
- (2) the information was credible. Note: under the New York law, the term, “reasonable cause” is equivalent to the term “probable cause.”

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

G. Search: A search is defined as any activity by a government official (including a police officer) that invades any area in which a person has a reasonable expectation of privacy. This includes but is not limited to a physical entry into an area, location, or item; a visual inspection or surveillance into a private area without an actual physical entry; an auditory interception or overhearing of communications on a communications device such as a telephone; and viewing data on a computer or similar device. A search deals with a person’s privacy rights, and can occur regardless of whether any items are actually seized or taken by the police.

H. Search Warrant Rule: In order to be reasonable and hence lawful, every search or seizure by the police must be done with a search warrant, or under one of the specific recognized exceptions to the search warrant requirement.

III. POLICY

A. It is the policy of the Rochester Police Department (RPD) to comply with the spirit and letter of the law. All searches will be conducted in a manner that protects the rights of all persons, and the integrity of the Department and its members.

B. The RPD neither condones nor permits the use of any bias-based profiling, as defined in G.O. 502, in asset seizure and forfeiture efforts.



C. It is acceptable for an officer to use a vehicle and traffic violation as a pretext for stopping a vehicle to further an investigation.

D. Members will not conduct a warrantless search unless it meets the legal criteria for an exception to the search warrant rule.

IX. WARRANTLESS SEARCHES – EXAMPLES

A. The following are some exceptions to the general search warrant rule (refer to Appendix I for detailed explanation):

1. Arrest Warrant Exception
2. Frisk Exception
3. Search Incident to Arrest Exception
4. Automobile Exception
5. Consent to Search Exception
6. Plain View Observation Exception
7. Abandoned or Discarded Property Exception
8. Open Fields Exception
9. Inventory Search Exception
10. Exigent Circumstances Exception

X. PROCEDURES DURING AND FOLLOWING WARRANTLESS SEARCHES

A. Following any search, members will document their actions. This is especially important because the reasonableness of the search and seizure cannot be based upon what was found as a result of the search. Instead it is measured by the facts and circumstances known to the member prior to the search and seizure. In the event a search results in a subsequent seizure that may later prove to be of evidentiary value and presented to a criminal court, the member will fully document the events that led up to the search, the reason for the search, the person(s) conducting the search, location of property discovered, chain of custody, etc. This documentation will be reduced on the appropriate RPD report form (Incident, IAR, etc.).

B. All evidence/contraband discovered during a search and subsequently seized will be processed and preserved per current evidence handling procedures, and fully documented and described on the Property Custody Report.

C. A copy of the completed Property Custody Report will be presented to the possessor/rightful owner of the property.

D. All seized property will be delivered to the custody of the Property Clerk pending later determination of property status, etc.



**APPENDIX I:
EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENTS**

B. FRISK EXCEPTION A police officer may search an individual for weapons if the officer has an articulate and reasonable fear that the individual may be armed. Whether called a frisk or a pat down, it is still a search and limited only to the detection of weapons. New York State CPL's "Stop and Frisk" statute authorizes:

1. A police officer to stop a person in a public place located in the officer's geographical area of employment when he reasonably suspects that such person is, has, or is about to commit a felony or misdemeanor defined in the Penal Law and may demand of such person, his name, address, and explanation of his conduct (CPL 140.50, the "stop"), and

2. Upon stopping a person as previously described, if the police officer reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons (CPL 140.50.3, the "Frisk"). This is a limited search for weapons. It does not allow the seizure of items not reasonably believed to be weapons (e.g., small soft glassine envelopes or crack vials, *People v. Brockington*). If, during the course of your frisk, you discover what turns out to be the fruits or instrumentalities of a crime that you have reasonable cause to believe was committed or was about to be committed, you may arrest the person and seize such property as evidence (*Peters v. New York*).

D. AUTOMOBILE EXCEPTION

An automobile may be searched without a warrant if there is probable cause to believe that there is evidence in the vehicle. This is the one exception where probable cause alone supplies the justification to conduct a warrantless search (*Carroll v. United States*).

Unlike the search incident to arrest, the automobile exception allows an officer to search the entire automobile, not just the interior, as long as he has probable cause to believe evidence may be located where he is looking. The search under this exception cannot exceed the scope of the probable cause. It also allows for the search of all containers and items contained in the motor vehicle if probable cause exists for these containers.

The automobile exception applies to all types of mobile, motorized wheeled vehicles (e.g., motor homes, etc. - *California v. Carney*).

If this defendant was driving or occupying a motor vehicle at the time of this arrest, a valid arrest for a crime authorizes a warrantless search (for a reasonable time and to a reasonable extent) of a vehicle and of a closed container visible in the passenger compartment of the vehicle, when the circumstances give reason to believe that the vehicle or its visible contents may be related to the crime for which the arrest is being made (as possibly containing contraband or as having been used in the commission of



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the crime), or there is reason to believe that a weapon may be discovered or access to means of escape thwarted. It does not extend to the trunk of the vehicle (*People v. Belton*).

Rochester Police Department Rules & Regulations

SECTION V – REPORTS

5.1 ALTERNING, DELAYING, OR FALSIFYING REPORTS

a) Employees shall not steal, alter, falsify, tamper with, withdraw, or request that any other person do the same to any report, letter, request, or other communication that is being forwarded through the chain of command. The removal of any record, card, report, letter, document, or other official file from the Department, or the permitting of inspection of same, except by process of law or as directed by the Chief of Police or a superior, is prohibited. Additionally, the obtaining/duplicating or attempted obtaining or duplicating of any information from Department files, sources or reports other than that to which one is properly entitled in accordance with one’s duties/assignments is prohibited. This shall not apply to the correction of errors.

b) Employees shall not dissuade any other employee from originating and submitting any lawful or proper report, whether on criminal or disciplinary matters.

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

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 evidence 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.”

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(<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.

ANALYSIS

Allegation 1: Equitable Policing (G.O. 502): [REDACTED], [REDACTED] and [REDACTED], [REDACTED] were racially profiled by Officer [REDACTED] and the stop was motivated by bias.

General Order 502 states that officers may use criminal profiling as an investigative method so long as it is not bias-based, but rather based on a standard of reasonable suspicion or probable cause. Officers must be able to articulate the facts and circumstances which provide objective, credible evidence to support probable cause or reasonable suspicion for the stop.

In a complaint to the PAB, [REDACTED] alleges that he and [REDACTED], [REDACTED] who are both Black men, were racially profiled by the officers and that the incident was influenced by racial bias.

In his Use of Force Report, Officer [REDACTED] wrote that on 07/17/2022 he and Officer [REDACTED] “just pulled up to East Ave/Lawrence St, where some officers were handling a robbery call that was recently called in.” Officer [REDACTED] states that he and Officer [REDACTED] observed a vehicle heading west on East Avenue “without headlights or taillights activated.” According to Officer [REDACTED] he “could not see ([REDACTED] and ([REDACTED]’s faces because both ([REDACTED] and ([REDACTED] were wearing ski masks and driving very slowly past the large group of pedestrians and officers in the NE parking lot of East Ave/N Union St.” Officer [REDACTED] stated that officers initiated the stop to address the observed traffic violation.

The observation of the vehicle being driven without lights activated is inconclusive by video evidence. Video evidence begins after officers pulled the vehicle over, it is not possible to determine whether [REDACTED], [REDACTED] activated the headlights and/or taillights before or after officers allege they observed him driving without them. Officer [REDACTED] body-worn camera (BWC) footage, begins at 2:35 AM, appears both the headlights and the taillights of the vehicle activated as he approached the passenger-side of the vehicle. In addition, the CAD document for the event showed that officers called in the license plate to dispatch, at 2:35:48, shortly after the initial contact, with the call being categorized as a traffic stop. It does not specify the alleged inoperable headlights and/or taillights.

[REDACTED], [REDACTED] was issued one traffic violation for operating a vehicle with no/inadequate lights. Operating a vehicle with no/inadequate light is a valid law enforcement reason for a traffic stop and does not violate policy.

The allegation that [REDACTED], [REDACTED] and [REDACTED], [REDACTED] were racially profiled by Officer [REDACTED], [REDACTED] and the stop was motivated by bias is recommended as not sustained.



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Allegation 2: Equitable Policing (G.O. 502): [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were racially profiled by Officer [REDACTED] and the stop was motivated by bias.

In his Incident Report, Officer [REDACTED] wrote that on July 17, 2022, he and Officer [REDACTED] were “taking down the bar detail barricades” at East Avenue and Lawrence Street when they observed a vehicle heading west on East Avenue without headlights on. According to Officer [REDACTED] officers observed two men in the vehicle, a driver and passenger, both of whom “appeared to have black ski masks pulled over their faces.” The officers then initiated the traffic stop at approximately 2:35 AM.

The observation of the vehicle being driven without lights activated is inconclusive by video evidence. Video evidence begins after officers pulled the vehicle over, it is not possible to determine whether [REDACTED] [REDACTED] activated the headlights and/or taillights before or after officers allege they observed him driving without them. No indication that there is blue light camera footage available. Officer [REDACTED] body-worn camera (BWC) footage begins as Officer [REDACTED] approached the driver-side, appears both the headlights and taillights of the vehicle to be activated. In addition, the CAD document for the event showed that officers called in the license plate to dispatch, at 2:35:48, shortly after the initial contact, with the call being categorized as a traffic stop. It does not specify the alleged inoperable headlights and/or taillights.

Officers issued [REDACTED] [REDACTED] one traffic violation for operating a vehicle with no/inadequate lights. Operating a vehicle with no/inadequate light is a valid law enforcement reason for a traffic stop and does not violate policy.

The allegation that [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were racially profiled by Officer [REDACTED] [REDACTED] and the stop was motivated by bias is recommended as not sustained.

Allegation 3: Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he drew his firearm on [REDACTED] [REDACTED]

The RPD’s General Order regarding Use of Force states that a member’s force must be reasonable, necessary, and proportionate under the totality of the circumstances. It states that the force must be used in order to effect a lawful purpose, including:

- To ensure the safety of a Member or third person
- To stop an attack
- To make an arrest
- To control a person evading a Member’s lawful commands, or
- To prevent escape

The level of force applied must correspond to the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. The totality of the circumstances includes (non-exhaustive list): the nature of the offense, seriousness of the offense, size



and strength of the person, number of persons, availability of weapons, mental instability of the person, availability of other force options, training and experience of the Member and person, environmental factors, presence of bystanders, and availability of back up and specialized units.

When Officer [REDACTED] noticed the gun on the floorboard of the vehicle, he said, [REDACTED] (to alert Officer [REDACTED] and then drew his firearm, pointing it at [REDACTED] [REDACTED]. With his gun drawn, Officer [REDACTED] opened the passenger-side vehicle door and took hold of [REDACTED] [REDACTED] right wrist, saying, "Don't move. Do not move, either of you!" [REDACTED] [REDACTED] put both of his hands up and responded, "You told me to get my license." Officer [REDACTED] responded, "Yeah, I know." [REDACTED] [REDACTED] said, "Yes, sir."

Officer [REDACTED] then instructed [REDACTED] [REDACTED] to put his hands on the ceiling. [REDACTED] [REDACTED] responded, "Yes, sir." Officer [REDACTED] then supplied conflicting commands, telling [REDACTED] [REDACTED] not to move. [REDACTED] [REDACTED] responded, "OK." Officer [REDACTED] instructed [REDACTED] [REDACTED] to put his arm under the seatbelt loop. As Officer [REDACTED] took control of [REDACTED] [REDACTED] right wrist, Officer [REDACTED] commanded [REDACTED] [REDACTED] to get out of the vehicle. Officer [REDACTED] then told [REDACTED] [REDACTED] to keep his other hand up. [REDACTED] [REDACTED] responded, "I swear it's up." Officer [REDACTED] then holstered his weapon and moved to the other side of the vehicle to assist officers detaining [REDACTED] [REDACTED].

According to officers, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were first pulled over for an observed traffic violation. However, the visibility of an unsecured handgun on the floorboard of the vehicle prompted Officer [REDACTED] to initiate the show of force. The show of force was necessary in order for Officer [REDACTED] to ensure the safety of nearby citizens as well as fellow officers.

Officer [REDACTED] decision to brandish his firearm was in accordance with the RPD's General Order, and it may be reasoned that any other officer facing the same set of circumstances would have reasonably employed the same use of force.

The allegation that Officer [REDACTED] used excessive force when brandishing his firearm is exonerated.

Allegation 4: Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he drew his firearm on [REDACTED] [REDACTED].

Officer [REDACTED] body-worn camera footage begins after he had drawn his weapon. In his Use of Force Report, Officer [REDACTED] wrote that as he approached the stop, he "saw both officers draw their firearms and heard the word "gun" yelled by one of the officers who were already by the vehicle." When Officer [REDACTED] arrived on the scene, he walked to the passenger side where Officer [REDACTED] was commanding [REDACTED] [REDACTED] to put his arm under the loop, to get out of vehicle and to keep his hands up at the same time. While making these commands, Officer [REDACTED] holds [REDACTED] [REDACTED] right wrist and pins it backwards against the passenger seat. At this point Officer [REDACTED] has already holstered his firearm, immediately, Officer [REDACTED] pulls [REDACTED] [REDACTED] out the opened passenger door and leads him by the wrist to the ground, saying "Down. Down. On the ground, on the ground." [REDACTED] [REDACTED] responds, "OK, OK." The show of force was necessary in order for Officer [REDACTED] to ensure the safety of nearby citizens as well as fellow officers.



Officer [REDACTED] decision to brandish his firearm was in accordance with the RPD's General Order, and it may be reasoned that any other officer facing the same set of circumstances would have reasonably employed the same use of force.

The allegation that Officer [REDACTED] used excessive force when brandishing his firearm is recommended as exonerated.

Allegation 5: Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he drew his firearm on [REDACTED].

Officer [REDACTED] body-worn camera footage begins as he approaches the driver side of the vehicle, immediately asks, "Where are you coming from?" [REDACTED] replies, "East Ave" as he starts to hand driver's license to officer. Officer replies "East Ave where? Where are you coming from to get you to down East Ave?" At this point, Officer [REDACTED] alerted Officer [REDACTED] that he observed a firearm on the floorboard on the passenger's side. Officer [REDACTED] commands [REDACTED] to "not fuckin move. Do not move. Keep hands on the steering wheel" while aiming firearm at him. He remain in this position until backup arrived, Officer [REDACTED] to remove [REDACTED] out the vehicle and handcuff him. At this point, the situation became safe and Officer [REDACTED] holstered his firearm. The show of force was necessary in order for Officer [REDACTED] to ensure the safety of nearby citizens as well as fellow officers.

Officer [REDACTED] decision to brandish his firearm was in accordance with the RPD's General Order, and it may be reasoned that any other officer facing the same set of circumstances would have reasonably employed the same use of force.

The allegation that Officer [REDACTED] used excessive force when brandishing his firearm is recommended as exonerated.

Allegation 6: Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he drew his firearm on [REDACTED].

According to Officer [REDACTED] use of force report, Officer [REDACTED] responded to an "air be held" incident around the corner from assign job post. As he approaches the incident he observes two officers detaining a passenger, also observes a handgun on the passenger floorboard in plain-view. At this point Officer [REDACTED] upholsters his fire gun, aims at [REDACTED] and commands him not to move. Once [REDACTED] was removed from the vehicle and detained, Officer [REDACTED] re holster his firearm.

Officer [REDACTED] decision to brandish his firearm was in accordance with the RPD's General Order, and it may be reasoned that any other officer facing the same set of circumstances would have reasonably employed the same use of force.

The allegation that Officer [REDACTED] used excessive force when brandishing his firearm is recommended as exonerated.

Allegation 7: Use of Force (G.O. 337): Officer [REDACTED] used excessive force when he detained [REDACTED].

Officer [REDACTED] instructed [REDACTED] to put his hands on the ceiling. [REDACTED] responded, "Yes, sir." Officer [REDACTED] then supplied conflicting commands, telling [REDACTED] not to move. [REDACTED] responded, "OK." While making commands, Officer [REDACTED] held [REDACTED] right wrist and pinned it backwards against the passenger seat. Based on the review of several BWC footage angles, there is no indication of resistance from [REDACTED]. Officer [REDACTED] instructed [REDACTED] to put his arm under the seatbelt loop. Officer [REDACTED] then commanded [REDACTED] to get out of the vehicle and to keep his other hand up. [REDACTED] responded, "I swear it's up." Officer [REDACTED] then grabbed [REDACTED] by the chest out the car as Officer [REDACTED] leads him to the ground through the opened passenger door.

The amount of force used when detaining [REDACTED] was necessary and, reasonable when considering the presence of an unsecured weapon in close proximity on the floorboard of the vehicle. Officer [REDACTED] decision to use force was in accordance with RPD's General order and any other officer facing the same set of circumstances would have reasonably employed the same use of force.

The allegation that Officer [REDACTED] used excessive force when detaining [REDACTED] is recommended as exonerated.

Allegation 8: Searches (G.O. 415): Officer [REDACTED] [REDACTED] unwarranted search of [REDACTED] was unlawful.

The appendix to General Order 415 states that "a police officer may search an individual for weapons if the officer has an articulate and reasonable fear that the individual may be armed. Whether called a frisk or a pat down, it is still a search and limited only to the detection of weapons. New York State CPL's "Stop and Frisk" statute authorizes: - Upon stopping a person as previously described, if the police officer reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons.

Officer [REDACTED] searched [REDACTED] pockets, for 2-3 minutes, before placing him in the back of a patrol car. Later Officer [REDACTED] is seen moving [REDACTED] to a different patrol car, but no further involvement. That is the only interaction Officer [REDACTED] had with [REDACTED].

It was necessary for Officer [REDACTED] to search or frisk [REDACTED] to ensure officer and bystander safety. Officer [REDACTED] decision to search [REDACTED] is objectively reasonable with the RPD's General Order, and another officer facing the same set of circumstances would have reasonably employed the same protocol.

The allegation that Officer [REDACTED] unwarranted search of [REDACTED] is recommended as exonerated.



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Allegation 9: Use of Force (G.O. 337): Officer ██████ used excessive force when he detained ██████

Officer ██████ BWC footages starts as he approaches vehicle with firearm drawn and immediately takes control of ██████ right wrist from Officer ██████. Officer ██████ commanded ██████ to get out of the vehicle and to keep his other hand up. ██████ responds, "I swear it's up." At this point Officer ██████ has already holstered his firearm; Officer ██████ then grabs ██████ by the chest area up and out the opened passenger door as Officer ██████ leads him to the ground, saying "Down. Down. On the ground, on the ground." ██████ responds, "OK, OK." Officer ██████ places his knee briefly on ██████ leg to get him flat on the ground, and then handcuffs him. At this point, Officer ██████ has arrived to the scene, and Officer ██████ places his knee in the center of ██████ back. Officer ██████ and ██████ then proceed to frisk and search ██████

Officer ██████ decision to brandish his firearm was in accordance with the RPD's General Order, and it may be reasoned that any other officer facing the same set of circumstances would have reasonably employed the same use of force. Officer ██████ brief use of force to bring ██████ to the ground so that he could be handcuffed and searched was reasonable under the circumstances.

The allegation that Officer ██████ use of excessive force when detaining ██████ is recommended as exonerated.

Allegation 10: Use of Force (G.O. 337): Officer ██████ used excessive force when he detained ██████

G.O. 337(III)(D) states that "Member 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."

As Officer ██████ leads ██████ to the ground, saying "Down. Down. On the ground, on the ground." ██████ responds, "OK, OK." Officer ██████ then proceeds to handcuff ██████. As Officer ██████ is doing so, Officer ██████ arrives to the scene. He runs over and immediately places his knee in the center of ██████ back and grabs ██████ right forearm to assist Officer ██████ in handcuffing him. It can be heard on BWC footage that ██████ yells in pain. Once ██████ is handcuffed, Officer ██████ gets off of him. Officer ██████ and DiSabatino proceed to frisk and search ██████

Officer ██████ briefly used force to assist in the handcuffing of ██████ who appeared to be complying with officer commands. This brief use of force may not have been necessary, but there is not substantial evidence that it was unreasonable under the circumstances.

The allegation that Officer ██████ used of excessive force when detaining ██████ is recommended as not sustained.



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Allegation 11: Searches (G.O.415): Officer [REDACTED] unwarranted search of [REDACTED] was unlawful.

General Order 415 : Appendix I: Exceptions to the search warrant, section B. Frisk exception states “a police officer may search an individual for weapons if the officer has an articulate and reasonable fear that the individual may be armed. Whether called a frisk or a pat down, it is still a search and limited only to the detection of weapons. New York State CPL's "Stop and Frisk" statute authorizes: Upon stopping a person as previously described, if the police officer reasonably suspects that he is in danger of physical injury, he may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons (CPL 140.50.3, the "Frisk").

Officer [REDACTED] has arrived to the scene, [REDACTED] is positioned on his stomach, Officer [REDACTED] responds by placing his knee in the center of [REDACTED] back and grabs his right forearm, holding him in place as Officer [REDACTED] cuffs him. It can be heard on BWC footage that [REDACTED] yells in pain. Officer [REDACTED] proceed to frisk and search [REDACTED] he finds [REDACTED] wallet in his pocket and places it on the sidewalk, Officer [REDACTED] retrieved the wallet and searched through it, during which he located a pistol permit issued to [REDACTED] Officer [REDACTED] informed Officer [REDACTED] of the pistol permit and said he would call county records to confirm its validity. Officer [REDACTED] confirmed that the serial number listed on the permit matched the handgun found in the vehicle. Officer [REDACTED] completes the search after about 2 minutes and helps [REDACTED] to his feet.

It was necessary for Officer [REDACTED] to search or frisk [REDACTED] to ensure officer and bystander safety, proportionate to the mentioned of an unsecured weapon on the floorboard of the vehicle. Officer [REDACTED] decision to search [REDACTED] is objectively reasonable with the RPD’s General Order, and another officer facing the same set of circumstances would have reasonably employed the same protocol.

The allegation that Officer [REDACTED] made an unwarranted search of [REDACTED] is recommended as exonerated.

Allegation 12: Searches (G.O. 415) Officer [REDACTED] [REDACTED] unwarranted search of [REDACTED] was unlawful.

Officer [REDACTED] has arrived to the scene after [REDACTED] is placed to the ground, [REDACTED] is positioned on his stomach, and Officer [REDACTED] responds by placing his knee in the center of [REDACTED] back and grabs his right forearm, holding him in place as Officer [REDACTED] cuffs him. It can be heard on BWC footage that [REDACTED] yells in pain. . Officer [REDACTED] proceed to frisk and search [REDACTED] he finds [REDACTED] wallet in his pocket and places it on the sidewalk, Officer [REDACTED] retrieved the wallet and searched through it, during which he located a pistol permit issued to [REDACTED] Officer [REDACTED] informed Officer [REDACTED] of the pistol permit and said he would call county records to confirm its validity. Officer [REDACTED] confirmed that the serial number listed on the permit matched the handgun found in the vehicle. Officer [REDACTED] completes the search and helps [REDACTED] to his feet.

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It was necessary for Officer [REDACTED] to search or frisk [REDACTED] [REDACTED] to ensure officer and bystander safety. Officer [REDACTED] decision to search [REDACTED] [REDACTED] is objectively reasonable with the RPD's General Order, and another officer facing the same set of circumstances would have reasonably employed the same protocol.

The allegation that Officer [REDACTED] made an unwarranted search of [REDACTED] [REDACTED] is recommended as exonerated.

Allegation 13: Altering, Delaying or Falsifying Reports (Rule 5.1): Officer [REDACTED] knowingly entered false information on his Incident Report.

The Rochester Police Department's Rules & Regulations state: "Employees shall not falsely make or submit any type of official report or knowingly enter or cause to be entered any inaccurate, false, or improper information on the records of the Department."

Officer [REDACTED] incident report are inconsistent with observable facts. Officer [REDACTED] incident report states: "We observed two males in the vehicle, a driver and a front seat passenger. Both males appeared to have black ski mask pulled over their faces". Body-worn camera footage from the involved officers shows that neither [REDACTED] [REDACTED] nor [REDACTED] [REDACTED] were wearing ski masks when Officers [REDACTED] and Officer [REDACTED] approached the vehicle. There are no ski masks observable in the vehicle during the search, and ski masks were not recovered from either [REDACTED] [REDACTED] or [REDACTED] [REDACTED] when they were searched and detained. There was no mentioned of ski masks being retrieved from or around the incident location. In their respective report(s), no other responding officer noted the presence of ski masks.

The allegation that Officer [REDACTED] knowingly entered false information on his Incident Report is recommended as sustained.

Allegation 14: Altering, Delaying or Falsifying Reports (Rule 5.1): Officer [REDACTED] knowingly entered false information on his Use of Force Report.

Officer [REDACTED] Use of Force report are inconsistent with observable facts; Officer [REDACTED] use of force report states: "I could not see ([REDACTED] and ([REDACTED]s faces because both ([REDACTED] and ([REDACTED] were wearing ski masks..." Body-worn camera footage from the involved officers shows that neither [REDACTED] [REDACTED] nor [REDACTED] [REDACTED] were wearing ski masks when officers [REDACTED] and [REDACTED] approached the vehicle. There are no ski masks observable in the vehicle during the search, and ski masks were not recovered from either [REDACTED] [REDACTED] or [REDACTED] [REDACTED] when they were searched and detained. No mentioned of a mask being collected near or around the incident location. In their respective report(s), no other responding officer noted the presence of ski masks.

The allegation that Officer [REDACTED] knowingly entered false information on his Use of Force Report is recommended as sustained.



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RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/ Recommendation
1	Officer ██████████	Equitable Policing (G.O. 502): ██████████ and ██████████ were racially profiled by Officer ██████████ and the stop was motivated by bias.	Not Sustained
2	Officer ██████████	Equitable Policing (G.O. 502): ██████████ and ██████████ were racially profiled by Officer ██████████ and the stop was motivated by bias.	Not Sustained
3	Officer ██████████	Use of Force (G.O. 337): Officer ██████████ used excessive force when he drew his firearm on ██████████	Exonerated
4	Officer ██████████	Use of Force (G.O. 337): Officer ██████████ used excessive force when he drew his firearm on ██████████	Exonerated
5	Officer ██████████	Use of Force (G.O. 337): Officer ██████████ used excessive force when he drew his firearm on ██████████	Exonerated
6	Officer ██████████	Use of Force (G.O. 337): Officer ██████████ used excessive force when he drew his firearm on ██████████	Exonerated
7	Officer ██████████	Use of Force (G.O. 337): Officer ██████████ used excessive force when he detained ██████████	Exonerated
8	Officer ██████████	Searches (G.O. 415): Officer ██████████ unwarranted search of ██████████ was unlawful.	Exonerated
9	Officer ██████████	Use of Force (G.O. 337): Officer ██████████ used excessive force when he detained ██████████	Exonerated
10	Officer ██████████	Use of Force (G.O. 337): Officer ██████████ used excessive force when he detained ██████████	Not Sustained
11	Officer ██████████	Searches (G.O. 415): Officer ██████████ unwarranted search of ██████████ was unlawful.	Exonerated
12	Officer ██████████	Searches (G.O. 415): Officer ██████████ unwarranted search of ██████████ was unlawful.	Exonerated
13	Officer ██████████	Altering, Delaying or Falsifying Reports (Rule 5.1): Officer ██████████ knowingly entered false information on his Incident Report.	Sustained
14	Officer ██████████	Altering, Delaying or Falsifying Reports (Rule 5.1 (c)): Officer ██████████ knowingly entered false information on his Use of Force Report.	Sustained



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City of Rochester
Police Accountability Board
 Established 2019

245 E. Main Street
 Rochester, NY 14604

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 #13 against Officer [REDACTED]

Misconduct	Level
RPD Rules & Regulation 5.1 5.1 Employees shall not falsely make or submit any type of official report or knowingly enter or cause to be entered any inaccurate, false, or improper information on the records of the Department.	5

- Recommended Level: #3 (“Pronounced negative impact on the community or department image or operations, or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 prior sustained violations): **10 day suspension**

Sustained Allegation #14 against Officer [REDACTED]

Misconduct	Level
RPD Rules & Regulation 5.1	5



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5.1 Employees shall not falsely make or submit any type of official report or knowingly enter or cause to be entered any inaccurate, false, or improper information on the records of the Department.	
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- Recommended Level: #3 (“Pronounced negative impact on the community or department image or operations, or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 1 prior incident with 8 sustained violations): **60 day suspension**