



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): 2023-0136

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

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

Case Findings:

Allegation 1: Sustained

Allegation 2: Not Sustained

Allegation 3: Sustained

Allegation 4: Sustained

Allegation 5: Sustained

Allegation 6: Sustained

Allegation 7: Not Sustained

Allegation 8: Not Sustained

Allegation 9: Sustained

Allegation 10: Sustained

Allegation 11: Sustained

Allegation 12: Sustained



Disciplinary Recommendation:

1. Officer [REDACTED] 60-day suspension
2. Officer [REDACTED] 60-day suspension. We would deviate down if RPD provided the officer's personnel/ disciplinary history but they decline to do so.
3. Officer [REDACTED] 60-day suspension. We would deviate down if RPD provided the officer's personnel/ disciplinary history but they decline to do so.

Dissenting Opinion/Comment:

Board member [REDACTED] would vote to sustain Allegations 7 and 8: because the arrest was not lawful and handcuffs did not need to be used.



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] Rule 2.1b (General Duties) Officer [REDACTED] failed to perform his duties in a competent manner.

- **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 # 2:

Officer [REDACTED] Rule 2.23b (Performance of Duties) Officer [REDACTED] committed an act of misfeasance, through the wrongful exercise of lawful authority when arresting [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 # 3:

Officer [REDACTED] Rule 2.23c (Performance of Duties) Officer [REDACTED] committed an act of malfeasance, by wrongfully arresting [REDACTED]

- **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 # 4:

Officer [REDACTED] Rule 4.2a (Courtesy) Officer [REDACTED] failed to remain courteous, civil and tactful in the performance of his duties.

- **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 # 5:

Officer [REDACTED] Rule 4.6 (Truthfulness) Officer [REDACTED] was untruthful when documenting this incident on the Incident Report and Accusatory Instrument.

- **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 # 6:

Officer [REDACTED] Rule 5.1a (Altering, delaying, or falsifying reports) Officer [REDACTED] falsified the Incident Report and Accusatory Instrument by inaccurately depicting the events that led to the arrest to [REDACTED]

- **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 # 7:

Officer [REDACTED] General Order 335 (Subject Resistance Report) Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via 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**

Officer Name- Allegation # 8:

Officer [REDACTED] General Order 337 (Use of Force) Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via 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**



Officer Name- Allegation # 9:

Officer [REDACTED] General Order 585 (Arrest) Officer [REDACTED] did not arrest [REDACTED] in accordance with the CPL of the State of New York.

- **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 # 10:

Officer [REDACTED] Body Worn Camera Manual: Officer [REDACTED] failed to activate and use his BWC in accordance with the Body Worn Camera Manual.

- **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 # 11:

Officer [REDACTED] Body Worn Camera Manual: Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual.

- **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 # 12:

Officer [REDACTED] Body Worn Camera Manual: Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual.

- **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**



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

On 07/09/2023 at approximately 6:50 PM, Officers [REDACTED] and [REDACTED] responded to [REDACTED] Rochester, NY 14607, for the report that [REDACTED] was suicidal and currently missing. The former girlfriend of [REDACTED], placed the 911 call.

[REDACTED] the father of [REDACTED] arrived at the apartment on University Avenue to collect his son's belongings. [REDACTED] refused to provide RPD with his son's location, stating his son was fine.

Officer [REDACTED] entered the apartment to speak with [REDACTED] and to try to obtain [REDACTED] whereabouts. No one else was present in the apartment at this time. While inside the home, [REDACTED] was uncooperative, and an argument ensued between Officer [REDACTED] and [REDACTED] resulting in Officer [REDACTED] arresting [REDACTED] for Disorderly Conduct without proper cause.

Additionally, [REDACTED] complained that Officer [REDACTED] used excessive force, as his cuffs were tight and caused numbness to his hand. However, there was insufficient evidence to determine whether Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via handcuffs.

Following his arrest, [REDACTED] arrived on the scene. [REDACTED] was issued an appearance ticket for Disorderly Conduct and subsequently released.

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]



INVOLVED INDIVIDUALS

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

ALLEGATIONS

1	Officer [REDACTED]	Rule 2.1b (General Duties) Officer [REDACTED] failed to perform his duties in a competent manner.
2	Officer [REDACTED]	Rule 2.23b (Performance of Duties) Officer [REDACTED] committed an act of misfeasance, through the wrongful exercise of lawful authority when arresting [REDACTED].
3	Officer [REDACTED]	Rule 2.23c (Performance of Duties) Officer [REDACTED] committed an act of malfeasance, by wrongfully arresting [REDACTED].
4	Officer [REDACTED]	Rule 4.2a (Courtesy) Officer [REDACTED] failed to remain courteous, civil and tactful in the performance of his duties.
5	Officer [REDACTED]	Rule 4.6 (Truthfulness) Officer [REDACTED] was untruthful when documenting this incident on the Incident Report and Accusatory Instrument.
6	Officer [REDACTED]	Rule 5.1a (Altering, delaying, or falsifying reports) Officer [REDACTED] falsified the Incident Report and Accusatory Instrument by inaccurately depicting the events that led to the arrest to [REDACTED].
7	Officer [REDACTED]	General Order 335 (Subject Resistance Report) Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via handcuffs.
8	Officer [REDACTED]	General Order 337 (Use of Force) Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via handcuffs.
9	Officer [REDACTED]	General Order 585 (Arrest) Officer [REDACTED] arrested [REDACTED] without a legal basis to do so.
10	Officer [REDACTED]	Body Worn Camera Manual: Officer [REDACTED] failed to activate and use his BWC in accordance with the Body Worn Camera Manual.
11	Officer [REDACTED]	Body Worn Camera Manual: Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual.
12	Officer [REDACTED]	Body Worn Camera Manual: Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual.



INVESTIGATION

██████████ filed a report with the Police Accountability Board ("PAB") via online portal on 07/11/2023. The Rochester Police Department ("RPD") was notified of PAB's investigation on 08/18/2023.

On 11/30/2023, RPD provided the PAB with 13 body-worn camera files created by Officers ██████████ and ██████████ as well as two Computer-Aided Dispatch ("CAD") reports, an incident report, a discovery checklist, accusatory instrument, appearance ticket and prisoner data report.

A review of the Body Worn Camera (hereinafter – BWC) revealed the following:

On 07/09/2023 at approximately 6:50 PM, Officers ██████████ and ██████████ responded to ██████████ Rochester, NY 14607, for the report that ██████████ was suicidal and currently missing. Officer ██████████ BWC reveals that upon arrival, officers met ██████████ on the sidewalk. ██████████ indicated that ██████████ has agoraphobia. During his interview, ██████████ confirmed his diagnosis of agoraphobia, in addition to having a panic disorder with OCD.

The National Library of Medicine defines agoraphobia as "the anxiety that occurs when one is in a public or crowded place, from which a potential escape is difficult, or help may not be readily available. It is characterized by the fear that a panic attack or panic-like symptoms may occur in these situations. Individuals with agoraphobia, therefore, strive to avoid such situations or locations."

(<https://www.ncbi.nlm.nih.gov/books/NBK554387/>)

██████████ expressed to officers that his son was nearby, he loves his son more than anything, and that his diagnosis of agoraphobia meant that he has an extreme fear of leaving the house. ██████████ indicated that he was going to pick his son up. Officers questioned where ██████████ was. ██████████ responded, "I didn't want me to tell you, so I'm not going to." ██████████ tone was flat and calm. ██████████ told the officers they could speak with his son's girlfriend. The Officers questioned if ██████████ had called the police, to which ██████████ responded that ██████████ had called them.

██████████ led the officers to the apartment, where ██████████ retrieved ██████████ so that she could speak to the officers. ██████████ entered the apartment as ██████████ talked to the officers outside. ██████████ stated that ██████████ and ██████████ had gotten into an argument, and ██████████ planned to leave. She said that ██████████ pulled out a knife and threatened to kill ██████████ self. ██████████ said that ██████████ paced around, making statements such as, "I can't go with them," "I can't be in an ambulance or in the hospital," and "It's going to kill me if I do that. I can't do that." ██████████ reported that ██████████ left the house with a knife.

On Officer ██████████ Body Worn Camera footage, at 18:56:39, Officer ██████████ expressed that ██████████ knows where ██████████ is. He then stated, "It's not like ██████████ be obstructing administration if ██████████ [inaudible.] Officer ██████████ responded, "Is it good if I go inside and have a conversation with ██████████ before this turns into something it doesn't have to?"

Officer ██████████ entered the home to speak with ██████████. Officer ██████████ stated that based on what ██████████ reported, ██████████ would have to tell him where his son was. ██████████ refused. Officer ██████████ stated, "This is the way it's gonna go, OK?" ██████████ responded, "You tell me how the fuck it's gonna go." ██████████ tone was agitated and elevated. Officer ██████████ told ██████████ to turn around and that ██████████ was

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going to arrest [REDACTED]. [REDACTED] responded, "OK," and shrugged his shoulders. [REDACTED] asked what [REDACTED] was being arrested for, and Officer [REDACTED] said, "For Obstructing Government Administration." [REDACTED] stated that [REDACTED] was not obstructing anything.

[REDACTED] walked several feet away from Officer [REDACTED]. Officer [REDACTED] explained that [REDACTED] had walked out with a knife and asked [REDACTED] why [REDACTED] was "playing these games." Officer [REDACTED] tone was elevated and agitated. [REDACTED] responded, "[REDACTED] my [REDACTED]." The Officer questioned how [REDACTED] would feel if [REDACTED] killed [REDACTED] self, and [REDACTED] answered that [REDACTED] knew [REDACTED] and that [REDACTED] was not doing anything.

Officer [REDACTED] asked again where [REDACTED] was. [REDACTED] replied, [REDACTED]. However, [REDACTED] later said that [REDACTED] was not there, and [REDACTED] was not telling Officer [REDACTED] "shit." [REDACTED] yelled at the Officer to "suck his dick" and said, "Come on. I came here. I was decent to you guys. I told you the truth. [REDACTED] fucking fine."

Officer [REDACTED] stated, "Alright," and moved toward [REDACTED]. [REDACTED] threw [REDACTED] hands in the air, dropping the items in [REDACTED] hand. [REDACTED] faced away from the Officer with his arms extended and [REDACTED] hands open. [REDACTED] then turned around and faced the Officer again. Officer [REDACTED] yelled for [REDACTED] to turn around, while [REDACTED] said, "No, no, no," with [REDACTED] hands in the air and open. Officer [REDACTED] grabbed hold of [REDACTED] right wrist and moved [REDACTED] right arm behind [REDACTED] back. Officer [REDACTED] told [REDACTED] "Don't tell me fuck you," as Officer [REDACTED] grabbed hold of [REDACTED] left arm to assist in handcuffing [REDACTED]. Officer [REDACTED] then stated, "You did it to yourself," and "You want to yell at me and tell me fuck you and suck your dick, huh?"

Officer [REDACTED] then escorted [REDACTED] from the home. [REDACTED] asked Officer [REDACTED] what [REDACTED] charges were, and Officer [REDACTED] replied, "Obstructing Government Administration." Officer [REDACTED] indicated that [REDACTED] would be taken to the hospital once [REDACTED] was located.

Once [REDACTED] was in the back of the squad car, Officer [REDACTED] placed his BWC inside the vehicle to record [REDACTED]. The BWC depicted officers conversing directly outside the car. Officer [REDACTED] is seen behind the squad car until 19:03:09, when he walks around the side of the vehicle and out of the camera's view. At 19:03:12, the BWC captures the sound of the car door opening. [REDACTED] sat quietly as Officer [REDACTED] asked [REDACTED] his date of birth. The timestamp on Officer [REDACTED] BWC reads 19:04:06, when [REDACTED] calmly stated, "The cuffs are cutting into my wrists." Officer [REDACTED] replied, "Try not to twist them." [REDACTED] responds, "OK." [REDACTED] was not moving.

At 19:05:01, [REDACTED] asks, "Do you have a legal right to go through my phone?" Officer [REDACTED] replied that he did and explained that because [REDACTED] left his house with a knife, threatening to kill [REDACTED] self, they had the right to go through his phone to try to locate [REDACTED]. Officer [REDACTED] reiterated that [REDACTED] was obstructing their administration of the investigation, and that is why [REDACTED] was under arrest. Officer [REDACTED] asked [REDACTED] for [REDACTED] phone passcode. [REDACTED] refused to provide [REDACTED] code.

It is unclear when or if Officer [REDACTED] is in the vehicle. During his interview, [REDACTED] reported that Officer [REDACTED] was never in the squad car with [REDACTED]. [REDACTED] stated that as [REDACTED] was in the car, the officers were around the vehicle talking to people. [REDACTED] noted the officers were close enough to hear [REDACTED] yelling within the vehicle, as he could hear them conversing outside. [REDACTED] said the officers looked at [REDACTED] but otherwise ignored [REDACTED].

At 19:11:26 of the BWC, [REDACTED] says, "Basically, 'cause I swore at him and gave him attitude, he arrested me."



█ █ began yelling out to the officers directly behind the squad car.

At 19:13:17, █ █ screams, "█ █ Do not do it! Don't tell him shit!"

█ █ lowered █ voice. "They're breaking- they're asking █ █ for my passcode to get into my fucking phone. Alright, that's - I'm definitely contacting a lawyer on this shit."

Officer █ █ could not access █ █ phone due to █ passcode. Regardless, Officer █ █ had just cause to access █ █ phone due to the "Emergency Doctrine," which allows Officers to access cell phones without a warrant in emergencies. (<https://data-rpdny.opendata.arcgis.com/documents/719386ad80a04d0c9da2abd92a284d20/explore>)

During █ interview, █ █ indicated that █ █ received a phone call from a male officer requesting the passcode to █ █ phone. █ █ refused, which was reportedly the end of the conversation. There is no BWC of the phone call between █ █ and RPD. █ █ did not know the name of the officer who called █ █

At 19:15:34, █ █ says, "█ █ didn't text me anyways, just so you know – So you can get in my phone. Not with my permission, ever, but if you go in my phone, █ █ didn't text me, so I don't really give a fuck. It was all phone calls, buddy." █ █ appears to be agitated.

█ █ became quiet and calm again.

At 19:22:24, █ █ is captured moving in the back of the vehicle. █ █ adjusted █ █ body and laid █ █ head against the back seat. █ █ moved again and peered out of the back window. █ █ remained quiet until 19:25:45. At 19:25:45, █ █ calmly stated, "My wrists are so tight that it's cutting off all my circulation, and I'm going to go to my doctor's afterward. I hope that by recording this because – when I see my doctor, I asked him to loosen them up. I told him they were cutting into my wrist. They don't have to be this tight. I've been arrested before. There was no reason to clamp them down except for the fact that I farted when they were putting on the cuffs."

At 19:28:42, █ █ stated, "My fucking wrists are fucked up, and they hurt bad." Followed by, "I'm going to have this recording fucking brought up. I'm going to ask for the recording so that you can have the fucking charges against them for fucking - They don't have to have them this tight."

At 19:35:32, █ █ indicated that once the police let █ █ go, they would need to write a report about █ █ "arms" because his wrists were "fucked." █ █ remarked again that █ █ hands were numb and, moments later, that █ █ lost all feeling in █ █ right hand.

At 19:43:48, while facing the vehicle's back window, █ █ yelled out, "Hey! Can I have them check out my wrist 'cause it's fucking totally numb? Totally numb all the way around, guy. I got to go to the hospital. Alright, Whatever. It's on tape in here. So you guys know I said it. I know you heard me. You looked right at me. No reason to have him this tight."

█ █ told the Officers, "Haven't you guys learned? You never learn, do you? Now I got to file a suit against you for my fucking arms."

█ █ expressed that the Officers knew they were cutting off █ █ circulation and that they could hear █ █. █ █ asked for █ █ cuffs to be loosened several more times and stated that █ █ was going to have to go to the hospital. During this time, █ █ was looking out of the window, yelling, and banging on the inside of the cruiser. █ █ continued to say that █ █ no longer had circulation in █ █ hands due to the cuffs.



■ ■ ■ turned forward to speak to Officer ■ ■ ■ lowered his voice and expressed that ■ ■ ■ hands were totally numb. ■ ■ ■ stated that he did not fight; ■ ■ ■ listened to the Officer, and the Officer could loosen the cuffs. ■ ■ ■ indicated, "You may not like what I said or how I acted, but that's no reason to fucking injure me."

■ ■ ■ told Officer ■ ■ ■ that ■ ■ ■ was right about ■ ■ ■ son being OK and that Officer ■ ■ ■ should have listened to ■ ■ ■. ■ ■ ■ stated that Officer ■ ■ ■ stressed out ■ ■ ■.

At 19:58:14, Officer ■ ■ ■ placed his BWC back on his body. Officer ■ ■ ■ exited his vehicle. ■ ■ ■ ■ ■ ■ was outside. Officer ■ ■ ■ informed ■ ■ ■ ■ ■ ■ that ■ ■ ■ ■ ■ ■ was arrested for Disorderly Conduct.

■ ■ ■ was released from the vehicle and given an appearance ticket. Upon exiting, ■ ■ ■ asked ■ ■ ■ to take pictures of ■ ■ ■ hands and stated that ■ ■ ■ had asked for the cuffs to be loosened repeatedly. ■ ■ ■ continued to complain about ■ ■ ■ wrists. Officer ■ ■ ■ said that he explained to ■ ■ ■ not to turn ■ ■ ■ wrists. ■ ■ ■ replied that ■ ■ ■ did not turn ■ ■ ■ wrists.

On 01/10/2024, ■ ■ ■ ■ ■ ■ was interviewed at the PAB office. ■ ■ ■ interview was video and audio recorded.

During ■ ■ ■ interview, ■ ■ ■ ■ ■ ■ indicated that ■ ■ ■ called ■ ■ ■ and told him ■ ■ ■ broke up with ■ ■ ■ friend, and ■ ■ ■ said ■ ■ ■ wanted to hurt ■ ■ ■ self, but that was "just a slip." ■ ■ ■ stated that ■ ■ ■ was nervous, ■ ■ ■ friend called the police, and they were going to arrest ■ ■ ■. ■ ■ ■ reported that ■ ■ ■ told him ■ ■ ■ was not going to hurt ■ ■ ■ self, but ■ ■ ■ needed clothes from the house.

■ ■ ■ said ■ ■ ■ arrived at the house and told the police ■ ■ ■ was fine. ■ ■ ■ stated that the Officer (identified as Officer ■ ■ ■) came inside the home as ■ ■ ■ was collecting ■ ■ ■ things and asked where ■ ■ ■ was. ■ ■ ■ indicated that ■ ■ ■ would not tell the Officer where ■ ■ ■ was, and ■ ■ ■ knew ■ ■ ■ was fine because ■ ■ ■ biggest fear was dying. ■ ■ ■ reiterated that the reason ■ ■ ■ did not tell the police where ■ ■ ■ was was because ■ ■ ■ has agoraphobia. ■ ■ ■ stated that if they arrested ■ ■ ■ or called an ambulance and took ■ ■ ■ to the psych ward, "■ ■ ■ would never get over it."

■ ■ ■ said the Officer threatened to arrest ■ ■ ■, and ■ ■ ■ told Officer ■ ■ ■ "fuck you," and "suck my dick." ■ ■ ■ reported that the Officer came over to arrest ■ ■ ■, and ■ ■ ■ did not fight, argue, or do anything; ■ ■ ■ put ■ ■ ■ hands behind his back. According to ■ ■ ■ ■ ■ ■ was placed in the back of the car, which had little room. ■ ■ ■ indicated that his hands being cuffed behind his back caused ■ ■ ■ shoulder pain, which ■ ■ ■ still has. ■ ■ ■ stated that the cuffs were cutting into ■ ■ ■ hands, and ■ ■ ■ asked them to be loosed multiple times. ■ ■ ■ noted that the Officer said the cuffs hurt due to him rolling around. ■ ■ ■ stated that once they let ■ ■ ■ out of the vehicle, ■ ■ ■ asked his son to take photos.

Additionally, ■ ■ ■ stated that Officer ■ ■ ■ gestured the middle finger at ■ ■ ■. However, if this act occurred, it was not captured on BWC.

■ ■ ■ reported that the ambulance checked ■ ■ ■ out, although they did not take ■ ■ ■.

■ ■ ■ stated that, specifically, ■ ■ ■ right hand was numb for a month and a half to two months, and ■ ■ ■ shoulders were injured following this event, and ■ ■ ■ did not think they would heal. ■ ■ ■ noted that the police did not injure his shoulders intentionally, but Officer ■ ■ ■ did tighten the cuffs deliberately. When asked if ■ ■ ■ sought medical care, ■ ■ ■ stated that ■ ■ ■ went to an aftercare unit, but after telling the physician what occurred, the doctor was "very resistant to say or do anything." ■ ■ ■ said the doctor commented that ■ ■ ■ started by saying ■ ■ ■ intended to sue the police, and the doctor "blew him off."



Furthermore, [REDACTED] said that [REDACTED] was ticketed for Disorderly Conduct and that, according to the law, you must be doing "something disorderly" in public. Yet, [REDACTED] was inside the apartment, telling the Officer to leave [REDACTED] alone. [REDACTED] stated that Officer [REDACTED] had no right to arrest [REDACTED] in the first place, as [REDACTED] could swear and express his First Amendment rights.

On 01/22/2024, [REDACTED] [REDACTED] was interviewed via telephone. [REDACTED] [REDACTED] refused to be audio recorded. Notes were taken for this interview and uploaded into the case file.

On 01/24/2024, [REDACTED] [REDACTED] was interviewed via telephone. [REDACTED] [REDACTED] refused to be interviewed in person or audio recorded. Notes were taken for this interview and uploaded to the case file.

On 02/14/2024, the PAB requested that Officer [REDACTED] participate in an interview. The City of Rochester Corporation Counsel refused RPD participation in an interview. On 04/10/2024, the PAB subpoenaed for testimony from Officer [REDACTED] Officer [REDACTED] declined to comply with the subpoena via an e-mail from Corporation Counsel, citing the Locust Club Collective Bargaining Agreement. Therefore, the PAB was unable to obtain any statement from Officer [REDACTED]

On 03/07/2023, a second request for information was sent to RPD, requesting all video and audio recordings, as RPD interacted with various civilians regarding this incident between when [REDACTED] [REDACTED] [REDACTED] was arrested and when his son arrived on the scene, which was not captured in the video sent to PAB. RPD responded that they rechecked their BWC system, and there are no additional files for the incident.

RPD did not provide disciplinary records for the Officers involved in this incident. The PAB reviewed the public 50a police discipline database and found no disciplinary records for Officer [REDACTED] Officer [REDACTED] or Officer [REDACTED]. However, it should be noted that the PAB has determined the 50a portal to be an incomplete, non-exhaustive record of police disciplinary files.



EVIDENCE OBTAINED

Evidence	Description	Provided by	Reason declined	Filename
Rochester Police Department Discovery Checklist	<p>Officer ██████ completed the Discovery Checklist on 07/09/2023.</p> <p>This document also includes the complaint regarding ██████ alleged disorderly conduct. Officer ██████ stated that ██████ swore at him before turning abruptly toward officers with ██████ fists balled "in an aggressive manner." Officer ██████ stated that ██████ "took a fighting stance."</p> <p>██████ appearance ticket is also included in this document.</p>	RPD	N/A	CL apt.info.pdf
Incident Report	<p>The RPD Incident Report was completed by Officer ██████ and reviewed by Sergeant ██████. This report was completed and reviewed on 07/10/2023.</p> <p>This report outlines the events leading up to ██████ arrest.</p> <p>Officer ██████ wrote that ██████ started yelling obscenities, and when Officer ██████ told ██████ that his actions were hindering the investigations of ██████ potentially suicidal ██████, ██████ approached Officer ██████ and screamed, "Arrest me." Officer ██████ wrote that he moved toward ██████ to detain ██████ and gave ██████ commands to turn around and away from officers. Officer ██████ reported that as ██████ approached ██████ further, ██████ quickly turned toward officers and balled up ██████ fists and tensed ██████ arms defensively appearing to ready ██████ self for a fight as ██████ stepped away from officers taking an aggressive fighting stance threatening that ██████ was going to fight officers. Officer ██████ assisted me with taking [arrestee] into custody without an incident." Officer ██████ stated that ██████ "continued to trash around and kick about the back of the patrol car" while they spoke with other parties.</p> <p>Officer ██████ stated that ██████ hands hurting was due to ██████ "thrashing and twisting ██████ wrists."</p>	RPD	N/A	Incident Report, Officer cor ██████. Supervisor cor ██████, Merged By ██████, Merged By ██████.pdf



EVIDENCE OBTAINED

Evidence	Description	Provided by	Reason declined	Filename
Prisoner Data Report	The Prisoner Data Report outlines descriptive information about [REDACTED] and states that he was arrested for "Disorderly Conduct: Fight/Violent Behavior."	RPD	N/A	PDR, Officer cor [REDACTED], Supervisor cor [REDACTED], Merged By COR [REDACTED].pdf
CAD card (Net Viewer Event Information)	Outlines the 911 call and subsequent police response.	RPD	N/A	I NetViewer Event Information.pdf
CAD card (Net Viewer Event Unit)	Outlines the unit response to the incident.	RPD	N/A	I NetViewer Event Unit.pdf
Body Worn Camera Footage	Body Worn Camera Footage for Officer [REDACTED]	RPD	It should be noted that the entirety of this event was not captured on BWC. On 03/06/2024, the PAB sent RPD a Source of Information Request, stating that the Officers on the scene did not capture various interactions between RPD and civilians. Captain [REDACTED] replied that the PAB had all the videos on file for this incident.	A7001_81679120230709185146_0004A.MP4 A7001_81679120230709192147_0005A.MP4 A7001_81679120230709195147_0006A.MP4 A7001_81679120230709200545_0007A.MP4 A7001_81679120230709201508_0008A.MP4
Body Worn Camera Footage	Body Worn Camera Footage for Officer [REDACTED]	RPD	It should be noted that the entirety of this event was not captured on BWC. On 03/06/2024, the PAB sent RPD a Source of Information Request,	00458_AE262620230709185124_0003.MP4 00458_AE262620230709193226_0004.MP4 00458_AE262620230709195957_0005.MP4



EVIDENCE OBTAINED

Evidence	Description	Provided by	Reason declined	Filename
			stating that the Officers on the scene did not capture various interactions between RPD and civilians. Captain [REDACTED] replied that the PAB had all the videos on file for this incident.	
Body Worn Camera Footage	Body Worn Camera Footage for Officer [REDACTED]	RPD	It should be noted that the entirety of this event was not captured on BWC. On 03/06/2024, the PAB sent RPD a Source of Information Request, stating that the Officers on the scene did not capture various interactions between RPD and civilians. Captain [REDACTED] replied that the PAB had all the videos on file for this incident.	A6966_81931220230709185229_0009A.MP4 A6966_81931220230709191608_0010A.MP4 A6966_81931220230709193928_0011A.MP4 A6966_81931220230709194259_0012A.MP4 A6966_81931220230709200009_0013A.MP4
Interview with [REDACTED]	Audio/video recording of the PAB investigative interview with [REDACTED]	PAB	N/A	ZOOM0001.MP3
Interview with [REDACTED]	Notes of the phone interview conducted with [REDACTED] [REDACTED]	PAB	N/A	https://cityofrochester.i-sight.com/note/12a6d671-f216-4f8b-b9b1-7e5a677b6e8d



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EVIDENCE OBTAINED

Evidence	Description	Provided by	Reason declined	Filename
Interview with [REDACTED]	Notes of the phone interview conducted with [REDACTED]	PAB	N/A	https://cityofrochester.irsight.com/note/1a6b5287-d4e3-405e-8f86-2d9d1a8d6a52
Officer Interview Request	Interview Request for Officer [REDACTED]	PAB	Corporation Counsel declined to comply with the interview request, citing the Locust Club Collective Bargaining Agreement.	https://cityofrochester.irsight.com/file/2cbb345d-af38-4dfe-8921-7bcd8a23fcc#
Subpoena for Officer Testimony	Subpoena ad Testificandum for Officer [REDACTED]	PAB	Corporation Counsel declined to comply with the subpoena, citing the Locust Club Collective Bargaining Agreement.	
Disciplinary Records	Disciplinary Records for the involved Officers	N/A	RPD did not provide these records, nor did they give a reason as to why.	N/A
Pictures and video of [REDACTED] wrist	Pictures and video of [REDACTED] wrist depict deep red indentations. The skin is not bruised or broken. An RPD squad car is visible in the background of the pictures and video.	[REDACTED]	N/A	Reporter Data



APPLICABLE RULES & LAWS

Rule 2.1b (General Duties)

b) Employees shall perform their duties in a competent manner.

Rule 2.15 (Arrest)

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

Rule 2.23b, 2.23c (Performance of Duties)

- a) Employees shall not commit an act of misfeasance.
- b) Employees shall not commit an act of malfeasance.

Rule 4.2a (Courtesy)

a) Employees shall be courteous, civil and tactful in the performance of their duties.

Rule 4.6 (Truthfulness)

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

Rule 5.1a, 5.1c (Altering, 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.
- 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.



General Order 335 (Subject Resistance Report)

I. DEFINITIONS

A. Appropriate Force - The reasonable force, based upon the totality of the circumstances known by the member, to affect an arrest, overcome resistance, control an individual or situation, defend oneself or others, or prevent a subject's escape.

B. Force - Any intentional physical strength or energy exerted or brought to bear upon or against a person for the purpose of compulsion, constraint or restraint.

II. POLICY

A. Members may use only that level of physical force necessary in the performance of their duties within the limits established by Article 35 of the New York State Penal Law and consistent with the training and policies of the Rochester Police Department (RPD). Appropriateness of force used is dependent on the "totality of the circumstances" at the moment the force is used. The Use of Deadly Physical Force will be governed by G.O. 340.

It is the responsibility of each member to be aware of the requirements of Article 35 and to guide their actions based upon that law and Departmental policy and training.

General Order 337 (Use of Force)

II. DEFINITIONS

Aggression – actions of Resistance that create a reasonable perception to the Member of an attempted attack or actual attack on the Member or another person.

Force – any intentional physical strength or energy exerted or brought to bear upon or against a person for the purpose of compulsion, constraint, or restraint.

General Order 585 (Arrest)

Physical Injury – Impairment of physical condition or substantial pain.

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

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.

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 585 (Arrest)

I. DEFINITIONS

B. Reasonable Cause: "Reasonable cause to believe that a person has committed an offense" exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. NY Criminal Procedure Law (CPL), § 70.10-2.



NOTE: This term may be used interchangeably with the term “probable cause.”

II. POLICY

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

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

III. PROCEDURES

A. On View Arrests Without A Warrant

1. Members may make arrests for offenses (violations, misdemeanors, or felonies) that are committed in their presence in accordance with the CPL of the State of New York.

Rochester Police Department Body-Worn Camera Manual

I. DEFINITIONS

A. Body-Worn Camera (BWC): Overt mobile audio- and video-capture device issued by the Rochester Police Department (RPD) designed to be worn by RPD employees in the course of their duties.

IV. RECORDING REQUIREMENTS AND RESTRICTIONS

A. Members assigned a BWC will activate it and record all activities, and all contact with persons, in the course of performing police duties as soon as it is safe and practical to do so, as set forth in this Manual.

1. Members will activate and record with the BWC preferably upon being dispatched and prior to exiting their police vehicle, or prior to commencing any activity if on foot patrol, as set forth below.

Criminal Penal Law § 240.20(1) Disorderly Conduct

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior



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People v. Baker 20 NY3d 354 (2013)

Following a verbal exchange between defendant and a police officer on a Rochester street, defendant was arrested for disorderly conduct. He challenged the legality of his arrest, arguing that the statements and conduct that preceded it did not rise to the level of disorderly conduct. The Court agreed.

The court found, as is clear from the precedent, critical to a charge of disorderly conduct is a finding that defendant's disruptive statements and behavior were of a **public** rather than an individual dimension. This requirement stems from the mens rea (mental state) component, which requires proof of an intent to threaten public safety, peace or order (or the reckless creation of such a risk). Thus, "a person may be guilty of disorderly conduct only when the situation extends beyond the exchange between the individual disputants to a point where it becomes a potential or immediate public problem." (People v Weaver, 16 NY3d 123, 128 [2011]).



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(l)(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).

After reviewing all available evidence, the following findings are recommended based on the above standards:

Allegation 1: Rule 2.1b (General Duties) Officer [REDACTED] failed to perform his duties in a competent manner.

Officer [REDACTED] failed to perform his duties in a competent manner by wrongfully arresting [REDACTED] for disorderly conduct based on the provisions outlined in § 240.20(1) of the Criminal Penal Law and court precedent. [REDACTED] actions were private rather than public, as the interaction between [REDACTED] and Officer [REDACTED] was inside a private residence. There was not evidence that a member of the public was caused inconvenience, annoyance, or alarm. [REDACTED] did not possess the *mens rea* (mental state) of intent to cause public inconvenience, annoyance, or alarm, nor did he recklessly create a risk thereof. Officer [REDACTED] repeated claim that he was arresting [REDACTED] for a different offense (one which another officer had told him was inapplicable) suggests a lack of competent reason to arrest [REDACTED].

The allegation that Officer [REDACTED] violated Rule 2.1b is sustained.



Allegation 2: Rule 2.23b (Performance of Duties) Officer [REDACTED] committed an act of misfeasance, through the wrongful exercise of lawful authority when arresting [REDACTED].

Merriam-Webster's dictionary defines misfeasance as "the performance of a lawful action in an illegal or improper manner." When analyzing the difference between misfeasance and malfeasance, misfeasance suggests an unintentional wrongful act, whereas malfeasance is committed knowingly.

Although Officer [REDACTED] failed to arrest [REDACTED] in full compliance and conformity with all laws and Department procedures, based on the available evidence, it was determined that Officer [REDACTED] committed a wrongful act knowingly.

The allegation that Officer [REDACTED] violated Rule 2.23b is not sustained.

Allegation 3: Rule 2.23c (Performance of Duties) Officer [REDACTED] committed an act of malfeasance, by wrongfully arresting [REDACTED].

Merriam-Webster's dictionary defines malfeasance as "wrongdoing or misconduct, especially by a public official." When analyzing the difference between misfeasance and malfeasance, misfeasance suggests an unintentional wrongful act, whereas malfeasance is committed knowingly.

Officer [REDACTED] failed to arrest [REDACTED] in full compliance and conformity with all laws and Department procedures; based on the available evidence, it was determined that Officer [REDACTED] committed malfeasance when he knowingly engaged in a wrongful act by placing [REDACTED] under arrest even though [REDACTED] had not committed a crime. Statements viewed on Body Worn Camera suggests that Officer [REDACTED] determined that he would be unable to charge [REDACTED] with Obstructing Governmental Administration. Nonetheless, he arrested [REDACTED] later charging [REDACTED] with a different and inapplicable offense (Disorderly Conduct.)

The allegation that Officer [REDACTED] violated Rule 2.23c is sustained.

Allegation 4: Rule 4.2a (Courtesy) Officer [REDACTED] failed to remain courteous, civil and tactful in the performance of his duties.

Officer [REDACTED] failed to remain courteous, civil, and tactful in the performance of his duties by yelling at [REDACTED] making statements such as "you did it to yourself," and "you want to yell at me and tell me fuck you and suck your dick, huh?" [REDACTED] was obviously agitated out of concern for [REDACTED] being arrested, and Officer [REDACTED] did not exhibit tact in his dealings with [REDACTED].

The allegation that Officer [REDACTED] violated Rule 4.2a is sustained.



Allegation 5: Rule 4.6 (Truthfulness) Officer [REDACTED] was untruthful when documenting this incident on the Incident Report and Accusatory Instrument.

Rule 4.6 states, "Employees are required to be truthful in speech and writing, whether or not under oath." Officer [REDACTED] was untruthful when documenting this incident on the Incident Report and Accusatory Instrument by inaccurately depicting the events that led to the arrest of [REDACTED]. He stated that [REDACTED] balled up [REDACTED] fists, but upon thorough review of body worn camera, the evidence shows that [REDACTED] did not ball up [REDACTED] fists.

The allegation that Officer [REDACTED] violated Rule 4.6 is sustained.

Allegation 6: Rule 5.1a (Altering, delaying, or falsifying reports) Officer [REDACTED] falsified the Incident Report and Accusatory Instrument by inaccurately depicting the events that led to the arrest to [REDACTED].

Based on the preponderance of the evidence, it was determined that Officer [REDACTED] falsified the Incident Report and Accusatory Instrument by inaccurately depicting the events that led to the arrest of [REDACTED].

During the interaction, Officer [REDACTED] indicated that [REDACTED] was being arrested for Obstructing Governmental Administration, or 'OGA.' However, Officer [REDACTED] ultimately arrested [REDACTED] for Disorderly Conduct, § 240.20(1) of the New York State Penal Law.

§ 240.20(1) states, "A person is guilty of disorderly conduct when with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: (1) He engages in fighting or in violent, tumultuous, or threatening behavior."

Officer [REDACTED] report claims that [REDACTED] "turned abruptly towards officers and balled [REDACTED] fists up in an aggressive manner and took a fighting stance." When analyzing Officer [REDACTED] and Officer [REDACTED] BWC footage, [REDACTED] hands can be seen throughout the majority of the interaction. [REDACTED] hand/hands leave the frame for no more than a few seconds. [REDACTED] was never captured balling [REDACTED] fists, and it is more likely than not that this act did not occur.

It should be noted that Officer [REDACTED] appears to exhibit bias against [REDACTED]. Upon arresting [REDACTED], Officer [REDACTED] states, "Don't tell me fuck you," and, "You did it to yourself - You want to yell at me and tell me fuck you and suck your dick, huh?"

Furthermore, Officer [REDACTED] had motive to falsify the document to avoid a claim of false arrest.

The allegation that Officer [REDACTED] violated Rule 5.1a is sustained.



Allegation 7: General Order 335 (Subject Resistance Report) Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via handcuffs.

There was insufficient evidence to determine if Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via handcuffs.

The allegation that Officer [REDACTED] violated General Order 335 is not sustained.

Allegation 8: General Order 337 (Use of Force) Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via handcuffs.

There was insufficient evidence to determine if Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via handcuffs.

The allegation that Officer [REDACTED] violated General Order 337 is not sustained.

Allegation 9: General Order 585 (Arrest) Officer [REDACTED] arrested [REDACTED] without reasonable cause, and not in accordance with the PL or CPL of the State of New York.

Officer [REDACTED] failed to arrest [REDACTED] in accordance with the CPL of the State of New York. Officer [REDACTED] ultimately arrested [REDACTED] for Disorderly Conduct, § 240.20(1) of the New York State Criminal Penal Law (CPL). § 240.20(1) states, "A person is guilty of disorderly conduct when with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: (1) He engages in fighting or in violent, tumultuous, or threatening behavior." [REDACTED] actions were private rather than public, as the interaction between [REDACTED] and Officer [REDACTED] was inside a private home. [REDACTED] did not possess the mens rea of intent to cause public inconvenience, annoyance, or alarm, nor did [REDACTED] recklessly create a risk thereof.

The allegation that Officer [REDACTED] violated General Order 585 is sustained.

Allegation 10: Officer [REDACTED] failed to activate and use his BWC in accordance with the Body Worn Camera Manual.

Officer [REDACTED] failed to activate and use his BWC in accordance with the Body Worn Camera Manual. The manual defines a Body-Worn Camera (BWC) as an "overt mobile audio- and video-capture device issued by the Rochester Police Department (RPD) **designed to be worn** by RPD employees in the course of their duties." Further, members assigned a BWC will activate it and record **all activities**, and all contact with persons, in the course of performing police duties as soon as it is safe and practical to do so, as set forth in this Manual. Additionally, members are to activate their cameras prior to exiting their police vehicle or prior to commencing any activity if on foot patrol, as set forth below.

Officer [REDACTED] failed to record his activities when he removed the camera from his body. Officer [REDACTED] also failed to activate his camera prior to exiting his vehicle.

The allegation that Officer [REDACTED] violated the Body-Worn Camera policy is sustained.



Allegation 11: Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual.

Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual. Members assigned a BWC will activate it and record **all activities**, and all contact with persons, in the course of performing police duties as soon as it is safe and practical to do so, as set forth in this Manual. Additionally, members are to activate their cameras prior to exiting their police vehicle or prior to commencing any activity if on foot patrol, as set forth below.

Officer [REDACTED] failed to record his activities per policy, as significant gaps in the police response he provided for this incident were not recorded. Officer [REDACTED] also failed to activate his camera before exiting his vehicle.

The allegation that Officer [REDACTED] violated the Body-Worn Camera policy is sustained.

Allegation 12: Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual.

Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual. Members assigned a BWC will activate it and record **all activities**, and all contact with persons, in the course of performing police duties as soon as it is safe and practical to do so, as set forth in this Manual. Additionally, members are to activate their cameras prior to exiting their police vehicle or prior to commencing any activity if on foot patrol, as set forth below.

Officer [REDACTED] failed to record his activities per policy, as significant gaps in the police response he provided for this incident were not recorded. Officer [REDACTED] also failed to activate his camera before exiting his vehicle.

The allegation that Officer [REDACTED] violated the Body-Worn Camera policy is sustained.



RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer [REDACTED]	Rule 2.1b (General Duties) Officer [REDACTED] failed to perform his duties in a competent manner.	Sustained
2	Officer [REDACTED]	Rule 2.23b (Performance of Duties) Officer [REDACTED] committed an act of misfeasance, through the wrongful exercise of lawful authority when arresting [REDACTED].	Not Sustained
3	Officer [REDACTED]	Rule 2.23c (Performance of Duties) Officer [REDACTED] committed an act of malfeasance, by wrongfully arresting [REDACTED].	Sustained
4	Officer [REDACTED]	Rule 4.2a (Courtesy) Officer [REDACTED] failed to remain courteous, civil and tactful in the performance of his duties.	Sustained
5	Officer [REDACTED]	Rule 4.6 (Truthfulness) Officer [REDACTED] was untruthful when documenting this incident on the Incident Report and Accusatory Instrument.	Sustained
6	Officer [REDACTED]	Rule 5.1a (Altering, delaying, or falsifying reports) Officer [REDACTED] falsified the Incident Report and Accusatory Instrument by inaccurately depicting the events that led to the arrest to [REDACTED].	Sustained
7	Officer [REDACTED]	General Order 335 (Subject Resistance Report) Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via handcuffs.	Not Sustained
8	Officer [REDACTED]	General Order 337 (Use of Force) Officer [REDACTED] used unnecessary force when mechanically restraining [REDACTED] via handcuffs.	Not Sustained
9	Officer [REDACTED]	General Order 585 (Arrest) Officer [REDACTED] arrested [REDACTED] without a legal basis to do so.	Sustained
10	Officer [REDACTED]	Body Worn Camera Manual: Officer [REDACTED] failed to activate and use his BWC in accordance with the Body Worn Camera Manual.	Sustained



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#	Officer	Allegation	Finding/Recommendation
11	Officer [REDACTED]	Body Worn Camera Manual: Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual.	Sustained
12	Officer [REDACTED]	Body Worn Camera Manual: Officer [REDACTED] failed to activate his BWC in accordance with the Body Worn Camera Manual.	Sustained



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 1 against Officer [REDACTED]

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
Rule 2.1b (General Duties) Officer [REDACTED] failed to perform his duties in a competent manner.	2

- Recommended Level: 2 (“More than minimal negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies”)
- Recommended Discipline (based on 0 known prior sustained violations): **5 day suspension**
- Explanation of deviation from presumptive penalty: No deviation.

Sustained Allegation 3 against Officer [REDACTED]

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
Rule 2.23c (Performance of Duties) Officer [REDACTED] committed an act of malfeasance, by wrongfully arresting [REDACTED]	3

- Recommended Level: 3 (“Pronounced negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 known prior sustained violations): **10 day suspension**
- Explanation of deviation from presumptive penalty: No deviation.



Sustained Allegation 4 against Officer [REDACTED]

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
Rule 4.2a (Courtesy) Officer [REDACTED] failed to remain courteous, civil and tactful in the performance of his duties.	3

- Recommended Level: 3 (“Pronounced negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 known prior sustained violations): **10 day suspension**
- Explanation of deviation from presumptive penalty: No deviation.

Sustained Allegation 5 against Officer [REDACTED]

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
Rule 4.6 (Truthfulness) Officer [REDACTED] was not truthful in speech or writing, whether or not under oath.	5

- Recommended Level: 4 (“Significant negative impact on the community or department image or operations, or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 known prior sustained violations): **60 day suspension**
- Explanation of deviation from presumptive penalty: Though the false statement on the report may have been intentional, it is not known that this officer has a history of falsification and the level of untruthfulness is not high.



Sustained Allegation 6 against Officer [REDACTED]

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
Rule 5.1a (Altering, delaying, or falsifying reports) Officer [REDACTED] falsified the Incident Report and Accusatory Instrument by inaccurately depicting the events that led to the arrest to [REDACTED] [REDACTED]	5

- Recommended Level: 4 (“Significant negative impact on the community or department image or operations, or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 known prior sustained violations): **60 day suspension.**
- Explanation of deviation from presumptive penalty: There was only one detail in the report that was determined to have been inaccurately depicted.

Sustained Allegation 9 against Officer [REDACTED]

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
General Order 585 (Arrest) Officer [REDACTED] arrested [REDACTED] [REDACTED] without reasonable cause, and not in accordance with the PL or CPL of the State of New York.	5

- Recommended Level: 4 (“Significant negative impact on the community or department image or operations, or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 known prior sustained violations): **60 day suspension**
- Explanation of deviation from presumptive penalty: Though a false arrest is very serious, this is the first time Officer [REDACTED] has been accused of falsifying an arrest, and termination may not be appropriate.



Sustained Allegation 10 against Officer [REDACTED]

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
Body Worn Camera Manual: Officer [REDACTED] failed to activate and use his BWC in accordance with the Body Worn Camera Manual.	4

- Recommended Level: 4 (“Significant negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 known prior sustained violations): **60-day suspension**
- Explanation of deviation from presumptive penalty: No deviation.

Sustained Allegation 11 against Officer [REDACTED]

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
Body Worn Camera Manual: Officer [REDACTED] failed to activate and use his BWC in accordance with the Body Worn Camera Manual.	4

- Recommended Level: 4 (“Significant negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 known prior sustained violations): **60-day suspension**
- Explanation of deviation from presumptive penalty: No deviation.

Sustained Allegation 12 against Officer [REDACTED]

DISCIPLINARY MATRIX APPENDIX

Misconduct	Level
Body Worn Camera Manual: Officer [REDACTED] failed to activate and use his BWC in accordance with the Body Worn Camera Manual.	4

- Recommended Level: 4 (“Significant negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline (based on 0 known prior sustained violations): **60-day suspension**
- Explanation of deviation from presumptive penalty: No deviation.