



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): 2023-0172

Date of Panel Review: 22-May-2024 11:20 AM (EDT)

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

Case Findings:

Allegation 1: Not sustained

Allegation 2: Exonerated

Allegation 3: Sustained

Allegation 4: Not sustained

Allegation 5: Not sustained

Allegation 6: Sustained

Allegation 7: Sustained

Allegation 8: Sustained

Disciplinary Recommendation:

Officer [REDACTED] 60 day suspension

Officer [REDACTED] 10 day suspension



Dissenting Opinion/Comment:

Relating to Level 3 and 4 instances of misconduct, [REDACTED] felt that the Matrix should have an in-between option for first offenders that is higher than 10 days and fewer than 60. He would have recommended a lighter suspension for Officer [REDACTED]



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:

Equitable Policing (G.O. 502): [REDACTED] was racially profiled by Officer [REDACTED] and the stop was motivated by bias. [REDACTED] Panel would prefer not sustained. Not having a clear view of the picture used by the officer and lack of response from RPD of reason for investigatory actions by the officers.

- **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:

Equitable Policing (G.O. 502): [REDACTED] was 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:

Searches (G.O. 415): Officer Connor [REDACTED] unwarranted search or “frisk” of [REDACTED] was unlawful.

- **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:

Prejudice (General Conduct 4.2 (b)): Officer [REDACTED] made comments expressing racial prejudice. Not having an interview didn't help. But we would recommend not sustained. Not enough proof of racial bias.

- **Does the Board Agree with the Findings of Fact? No**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? No**
- **Does the Board Agree with the Proposed Disciplinary Action? No**



Officer Name- Allegation # 5:

Prejudice (General Conduct 4.2 (b)): Officer [REDACTED] made comments expressing racial prejudice.

- **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:

Impairing public respect (General Conduct 4.1 (b)): Officer [REDACTED] made comments that impair public respect for the employee and/or the Department, and/or impair confidence in the operation of the Department.

- **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:

Field Interview/Intelligence Information Form (FIF) (G.O. 570): Officer [REDACTED] did not complete a FIF after questioning [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 # 8:

Field Interview Intelligence Information Form (FIF) (G.O. 570): Officer [REDACTED] did not complete a FIF after questioning [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**



CLOSING REPORT

STATEMENT OF AUTHORITY

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

EXECUTIVE SUMMARY

The event took place on 09/02/2023 at Clifford Food Market, located at 1547 Clifford Avenue, Rochester, NY 14609. At 6:00 PM, Officer [redacted] and Officer [redacted] entered Clifford Food Market and stopped [redacted] for questioning (Allegation 1, Allegation 2). Officers asked [redacted] for [redacted] name, birthday and ID, and said [redacted] looked like someone the officers were trying to locate. [redacted] provided [redacted] name and birthday but did not provide ID. Officer [redacted] then asked [redacted] whether [redacted] was carrying "anything he should know about" as he began to pat down [redacted] pockets and stomach (Allegation 3). [redacted] stepped away, asserting that the search was unlawful. Officer [redacted] continued to attempt to search [redacted] back pockets, restraining [redacted] by holding [redacted] right wrist. [redacted] pulled away from Officer [redacted] and again stated that [redacted] did not have to provide information to officers because [redacted] did not commit a crime.

Officer [redacted] pulled out a photograph on his phone of the person whom officers were trying to locate and showed it to [redacted]. The photograph depicts an African American man. [redacted] said the photograph was not [redacted], and officers ultimately agreed.

Officers [redacted] and [redacted] and [redacted] then had a brief verbal dispute. At 6:02 PM, [redacted] stated that [redacted] hadn't done anything wrong, and that if officers believed [redacted] had, they should take [redacted] to jail. Officer [redacted] responded, "When that time comes, we will," (Allegation 4). At 6:03 PM, Officer [redacted] addressed the customers in the store at large, stating, "You know what? Here's what we're going to do. We're going to let all criminals go free, we're going to stop looking for people, and then it'll be a community problem." (Allegation 5, Allegation 6). Officers [redacted] and [redacted] then exited the store. (Allegation 7, Allegation 8).

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]



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Police Accountability Board
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INVOLVED INDIVIDUALS

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

ALLEGATIONS

1	Officer [REDACTED]	Equitable Policing (G.O. 502): [REDACTED] was racially profiled by Officer [REDACTED] and the stop was motivated by bias.
2	Officer [REDACTED]	Equitable Policing (G.O. 502): [REDACTED] was racially profiled by Officer [REDACTED] and the stop was motivated by bias.
3	Officer [REDACTED]	Searches (G.O. 415): Officer [REDACTED] unwarranted search or "frisk" of [REDACTED] was unlawful.
4	Officer [REDACTED]	Prejudice (General Conduct 4.2 (b)): Officer [REDACTED] made comments expressing racial prejudice.
5	Officer [REDACTED]	Prejudice (General Conduct 4.2 (b)): Officer [REDACTED] made comments expressing racial prejudice.
6	Officer [REDACTED]	Impairing public respect (General Conduct 4.1 (b)): Officer [REDACTED] made comments that impair public respect for the employee and/or the Department, and/or impair confidence in the operation of the Department.
7	Officer [REDACTED]	Field Interview/Intelligence Information Form (FIF) (G.O. 570): Officer [REDACTED] did not complete a FIF after questioning [REDACTED]
8	Officer [REDACTED]	Field Interview Intelligence Information Form (FIF) (G.O. 570): Officer [REDACTED] did not complete a FIF after questioning [REDACTED]

INVESTIGATION

Reporter [REDACTED] filed a report by phone with the Police Accountability Board ("PAB") on 09/06/2023. The Rochester Police Department ("RPD") was notified of PAB's investigation on 09/08/2023.

On 09/11/2023, Captain [REDACTED] provided the PAB with two body-worn camera files created by Officer [REDACTED] and Officer [REDACTED] respectively, as well as two Computer-Aided Dispatch ("CAD") reports.

On 09/11/2023, a second request for information was sent to RPD, seeking any Field Investigation Forms ("FIFs"), investigative action reports or incident reports documenting the event, any warrants or instructions given to officers regarding the stop, disciplinary records for the involved officers, and the meta-data for the body-worn camera footage. Captain [REDACTED] responded to the PAB on 09/18/2023



and stated that no other records regarding the incident could be located, and the meta-data from the body-worn camera footage could not be provided. The request for disciplinary records was denied.

Officer Statement Request letters for Officers [REDACTED] and [REDACTED] were sent to RPD Chief of Police [REDACTED] on 11/27/2023. Officers were given five business days to schedule an interview or provide a statement to PAB regarding the alleged misconduct. The request was denied by City of Rochester Deputy Corporation Counsel [REDACTED] on 11/30/2023.

This is the first time Officer [REDACTED] has been the subject of an investigation closed by the PAB. Officer [REDACTED] is named on the District Attorney's Giglio list. According to the International Association of Chiefs of Police, a Giglio list contains "the names and details of law enforcement officers who have had sustained incidents of untruthfulness, criminal convictions, candor issues, or some other type of issue placing their credibility into question."

This is the first time Officer [REDACTED] has been the subject of an investigation closed by the PAB. Officer [REDACTED] is named on the District Attorney's Giglio list. According to the International Association of Chiefs of Police, a Giglio list contains "the names and details of law enforcement officers who have had sustained incidents of untruthfulness, criminal convictions, candor issues, or some other type of issue placing their credibility into question."

EVIDENCE REQUESTED

Evidence	Description	Provided by	Reason declined	Filename
CAD sheet	Shows the call from officers to dispatch after the encounter with [REDACTED]	Capt. [REDACTED] Rochester Police Department	N/A	NetViewer_Event Information.pdf
CAD sheet	Shows the unit response to the encounter with [REDACTED]	Capt. [REDACTED] Rochester Police Department	N/A	NetViewer_Event Unit.pdf
Body-worn camera video	Officer [REDACTED] body-camera footage	Capt. [REDACTED] Rochester Police Department	N/A	[REDACTED]_81794020230902180050_0025A.MP4
Body-worn camera video	Officer [REDACTED] body-camera footage	Capt. [REDACTED] Rochester Police Department	N/A	00345_[REDACTED]_230902180047_0006.MP4
Incident reports/FIFs	Any/all reports documenting the interaction with [REDACTED]	Not provided	Unable to locate	N/A

**EVIDENCE REQUESTED**

Evidence	Description	Provided by	Reason declined	Filename
Metadata	Body-worn camera footage metadata	Not provided	Not aware of how to provide	N/A
Export log	Body-worn camera footage export log	Capt. [REDACTED] Rochester Police Department	N/A	ExportLog_20230911_110906.txt
Records related to the reason for the stop	Documents given to officers regarding the individual they were attempting to locate, e.g., search or arrest warrants, photographs, Attempts to ID request	Not provided	Would not know/not in possession	N/A
Disciplinary records	Disciplinary records for officers involved	Not provided	Denied	N/A
First SOI request response	Response to first request for information including reasons for denials	Capt. [REDACTED] Rochester Police Department	N/A	InitialNotification_2023-0172_RPD_Response_9-11-23.pdf
Second SOI request response	Response to second request for information including reasons for denials	Capt. [REDACTED] Rochester Police Department	N/A	SOI_2023-0172-02_Updated_response_9-18-23.pdf
Dispatch audio	Audio file of the call from Officer [REDACTED] to dispatch after her encounter with [REDACTED]	PAB	N/A	202309021637-207795-6850.mp3 (sharepoint.com)
Officer Statement Request: [REDACTED]	Officer Statement Request from PAB to Officer [REDACTED]	PAB	N/A	Officer Statement Request_[REDACTED]_23-0172.docx



EVIDENCE REQUESTED

Evidence	Description	Provided by	Reason declined	Filename
	██████████ on 11/27/2023			
Officer Statement Request: ██████████	Officer Statement Request from PAB to Officer ██████████ on 11/27/2023	PAB	N/A	Officer Statement Request_██████████_23-0172.docx

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.

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 415: Searches

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



PAB

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VIII. STRIP AND BODY CAVITY SEARCHES

2. Field strip searches or visual body cavity inspections of prisoners without a warrant will be conducted only in the rarest of circumstances under exigent circumstances where the life of members or others may be placed at risk, and only with the explicit approval of a supervisor. Members will not conduct a strip search or visual body cavity inspection without a warrant of any person who has not been placed under arrest. Under no circumstances may members conduct a strip search or visual body cavity inspection of persons who are detained in a “De Bour” or “stop and frisk” situation.

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.)

E. Additional procedures in Consent to Search instances:

1. Written Consent – Whenever possible, consent searches should be in writing and read out loud to the person giving consent.
 - a) Members may attempt to obtain a written consent prior to a search of a vehicle or premises.
 - b) In the event a written consent is obtained, members conducting the search will utilize a Consent to Search Form, RPD 1353, (Attachment 6) to document the written and voluntary authorization by the person granting same.
 - c) In cases of third party consent, the member must inquire into the person's authority and competency to give consent, and then document that information/authority.



2. Oral Consent In the event a written consent is refused but an oral consent is granted, another member or a responsible civilian will serve as a witness to the oral consent. The member receiving the permission to search will utilize the appropriate Departmental report form (e.g., Incident, IAR) to document the following:

- a) The actual words used by the consenting party and the circumstances surrounding the consent.
- b) The reason(s) why written consent was refused, as stated by the consenting party.
- c) The name, address, and phone number of the witness when the witness is a civilian.

APPENDIX I EXCEPTIONS TO THE SEARCH WARRANT REQUIREMENT

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*).

Rochester Police Department Rules & Regulations: General Conduct 4.2

SECTION IV - GENERAL CONDUCT

4.2 COURTESY

- a) Employees shall be courteous, civil and tactful in the performance of their duties.
- b) Employees shall not express or otherwise manifest any prejudice concerning age, marital status, handicap, disability, race, creed, color, religion, national or ethnic origin, sex, sexual preference, or other personal characteristics.
- c) Employees shall not use harsh, profane, insolent, or intentionally insulting language toward any other employee or other person.



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Rochester Police Department Rules & Regulations: General Conduct 4.1

SECTION IV - GENERAL CONDUCT

4.1 CONDUCT

- a) Employees shall so conduct themselves in both their private and professional lives as to avoid bringing discredit upon the Department.
- b) Employees shall not engage in conduct on or off-duty which adversely affects the efficiency of the Department, or engage in conduct on or off-duty which has a tendency to impair public respect for the employee and/or the Department, and/or impair confidence in the operation of the Department.

General Order 570: Field Interview Intelligence Information Form

I. DEFINITIONS

- A. **Field Interview** – The brief detainment of an individual, whether on foot or in a vehicle, based on People v. De Bour Level 1 (Request for Information), or People v. De Bour Level 2 (Common Law Right to Inquiry), or People v. De Bour Level 3 (Reasonable Suspicion), where the member has an articulable basis for the interaction in accordance with Department training and guidelines established for such interaction, and with authoritative decisions of the Courts of the State of New York and United States.
- B. **Valid Law Enforcement Purpose** – Lawful activities related to the prevention of crime and/or the apprehension of persons responsible for the commission of crimes.

II. POLICY

- A. The Rochester Police Department neither condones nor permits the use of any bias based profiling as defined in G.O. 502, Equitable Policing, in field interview contacts. Field interview contacts and reporting will serve a valid law enforcement purpose.
- B. The RMS Field Interview Form (FIF) will be used to document information obtained through non-custodial field interviews, post-arrest information, police officer observations, and information from citizens, constituting investigative and / or intelligence information. It will also be used to document all contacts and requests to U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) for assistance, and all requests from CBP or ICE for RPD assistance. See G.O. 502, Equitable Policing, § V.H.

III. PROCEDURES

- A. Members may request information and/or stop individuals for the purpose of conducting a field interview only when, and to the extent that, they are authorized to so in accordance with Section II.A., above. Note: A subject may only be detained or handcuffed if circumstances justify a Level 3 De Bour stop. Handcuffing is not justified as a normal course of business during level 1 and 2 stops. Any handcuffing must be clearly documented along with the circumstances which justified such detention.



B. In justifying the field interview, members must be able to articulate specific facts, that when taken together with rational inferences drawn from those facts in light of experience, reasonably warrant the questioning and/or stop

D. Members will:

1. Complete an FIF concerning any stop based on reasonable suspicion that the person stopped was committing, had committed or was about to commit a crime.

2. Complete an FIF concerning suspected criminal activity or information of an investigative or intelligence-related nature (e.g., information which deals directly with an ongoing crime trend or which could have direct bearing on a future incident) serving a valid law enforcement purpose which is received through field interviews other than those based on reasonable suspicion, or which is received through post-arrest interrogations, police officers observations or information from citizens.

3. Complete and submit reports by the end of that tour of duty. Members will notify a platoon supervisor for any report that cannot be completed by the end of that tour of duty, and will obtain approval to either complete the report immediately or during their following tour of duty. Note: When information is received or observed off-duty, the FIF will be submitted as soon as possible or during the member's next scheduled tour of duty.

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

According to [REDACTED] statements to [REDACTED] during the incident, officers initiated the stop because they were trying to locate the person in the photograph. General Order 502 (Equitable Policing) 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.

Based on the New York State Court of Appeals case known as *People v. De Bour*, 40 NY2d 210 (1976), law enforcement officers have four “levels” of engagement during street stops that determine the extent to which officers can question and search a person. In RPD Training Bulletin L-40-02, the criteria for the first “level,” which allows an officer to question a person beyond a casual conversation, stipulates there must be a:

- Objective, credible reason for request.
- There need not be any indication that a crime has been committed.
- Request may be for identity, destination, purpose for being at a particular location, if the person is carrying something that would appear to be unusual to a trained Police Officer, they may ask about it.
- The individual may refuse to answer any questions and leave.

It is unclear what evidence, if any, led to the reasonable suspicion that [REDACTED] would be positively identified as the person in the photograph. CAD documents show that Officers [REDACTED] and [REDACTED] called in the “suspicious person or incident,” after the event transpired, and there is no available record of a 911 call from outside of the police department about [REDACTED] behaving suspiciously. Requests for additional information regarding the purpose of questioning [REDACTED] (e.g., the circumstances surrounding the search for the person in the photograph) were denied, and no reports documenting the stop after it transpired could be located.

In his statements to [REDACTED] during the incident, Officer [REDACTED] articulated an objective, credible reason for the stop when he explained that he was searching for the person in the photograph who resembled [REDACTED]. Officer [REDACTED] also produced objective, credible evidence to support the stop when he showed the photograph of the person for whom he was looking.

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

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

According to Officer [REDACTED] statements to [REDACTED] during the incident, officers initiated the stop because they were trying to locate the person in the photograph. General Order 502 (Equitable Policing) 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.



Based on *People v. De Bour*, 40 NY2d 210 (1976), law enforcement officers have four “levels” of engagement during street stops that determine the extent to which officers can question and search a person. In RPD Training Bulletin L-40-02, the criteria for the first “level,” which allows an officer to question a person beyond a casual conversation, stipulates there must be a:

- Objective, credible reason for request.
- There need not be any indication that a crime has been committed.
- Request may be for identity, destination, purpose for being at a particular location, if the person is carrying something that would appear to be unusual to a trained Police Officer, they may ask about it.
- The individual may refuse to answer any questions and leave.

It is unclear what evidence, if any, led to the reasonable suspicion that [REDACTED] would be positively identified as the person in the photograph. CAD documents show that Officers [REDACTED] and [REDACTED] called in the “suspicious person or incident,” after the event transpired, and there is no available record of a 911 call from outside of the police department about [REDACTED] behaving suspiciously. Requests for additional information regarding the purpose of questioning [REDACTED] (e.g., the circumstances surrounding the search for the person in the photograph) were denied, and no reports documenting the stop after it transpired could be located.

In her statements to [REDACTED] during the incident, Officer [REDACTED] articulated an objective, credible reason for the stop, explaining that she was searching for a person in the photograph.

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

Allegation 3: Searches (G.O. 415): Officer [REDACTED] unwarranted search or “frisk” of [REDACTED] was unlawful.

Officer [REDACTED] warrantless search of [REDACTED] is observable on the body-worn camera footage.

The Fourth Amendment to the U.S. Constitution, and the New York Constitution, prohibit “unreasonable searches and seizures.” The Rochester Police Department’s General Orders require that all searches are conducted in a manner that protects the rights of all people, and the integrity of the Department and its members. Officers cannot conduct a warrantless search unless it meets the legal criteria for an exception to the search warrant rule.

To determine whether a frisk can be considered an “exigent circumstance” to search without a warrant, officers must establish which of the four “levels” established by *People v. De Bour*, 40 NY2d 210 (1976) applies to the situation. For the frisk exception to apply in this incident, Officer Brock would have had to establish that the interaction qualified, at a minimum, as *De Bour Level 3: Forcible Stop & Detention*. A *De Bour Level 3* stop would require Officer [REDACTED] to:

- Entertain a “reasonable suspicion” that [REDACTED] has “committed, is committing or is about to commit a felony or misdemeanor,” AND
- “Reasonably suspect” that he was “in danger of physical injury by virtue of the detainee being armed.”

A review of the body-worn camera footage shows that Officer [REDACTED] did not obtain verbal or written consent to search [REDACTED], so justification for a *De Bour Level 3* stop would need to be established in



order for the search to be considered lawful. Because the RPD would not provide records related to the investigation that prompted the stop, it is not possible to determine whether Officer ██████ could have established a “reasonable suspicion” that ██████ had committed, was committing or was about to commit a felony or misdemeanor. Allowing reasonable suspicion was established, Officer ██████ would have to “reasonably suspect” he was in danger of physical injury because of a belief that ██████ was armed.

G.O. 415 (Searches) specifies that all searches must be documented on an Incident Report or Investigative Action Report along with details of the search, including the date, location, identities of the involved parties, a description of the nature and extent of the search, and the articulable basis supporting the initiation of the search. The order states, “Following any search, members will document their actions...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.)”

In this case, Officer ██████ had a photograph of what he described as a “person he was looking for,” but the RPD declined to provide any information about the photograph or why ██████ was stopped. In a response to a request from PAB for information available to officers related to the photograph, Captain ██████ responded on 09/18/2023, “I am not in possession and would not know what files or documents ██████ and ██████ (sic) would have had or known about. That is a question you would have to ask from (sic) them.” A request to interview officers was sent on 11/30/2023 and denied by the City of Rochester’s Law Department on behalf of Police Chief ██████

Officer ██████ did not document his search of ██████ which may have provided investigators with information regarding the reason for the stop. While CAD documents show that Officer ██████ called dispatch after the event transpired to report their interaction, Officer ██████ did not complete an incident report, an investigative action report, a Field Interview/Intelligence Information Form (FIF) or document his search of ██████ following the incident. Officers ██████ and ██████ did not document the stop and search of ██████ as would have been required if the stop and subsequent search was a part of a broader investigation.

Allowing the search was based on reasonable suspicion; both *De Bour* case law and the RPD’s General Order specify the officer must “reasonably suspect that he is in danger of physical injury,” to search ██████ without his consent. The reason for the search cannot be determined, so it is impossible to entirely rule out that Officer ██████ perceived an imminent threat based on the facts and circumstances known to him prior to the interaction. However, there are facts and circumstances suggesting any perception of immediate danger should be considered unreasonable.

- A review of dispatch audio obtained and transcribed by the PAB shows Officer ██████ called the interaction into dispatch after the interaction took place, stating “1 male, no DL (driver’s license.)” ██████ did not alert dispatch to an active threat or note that officers believed ██████ might have been armed.
- ██████ was not handcuffed or otherwise temporarily detained, which would have been justified at a *De Bour* Level 3 stop.
- Immediately preceding and during the frisk, Officer ██████ asks ██████, “Do you have anything on you I should know about, any weapons or anything?” Thus, Officer ██████ was not limiting his search exclusively to weapons, which indicates that the search was not conducted for the sole purpose of keeping officers safe from an imminent threat that ██████ would use a weapon, as is required by a *De Bour* Level 3.



- After [REDACTED] protested the legality of the frisk, Officer [REDACTED] concluded the search and the interaction proceeded peacefully. Officer [REDACTED] expressed uncertainty about whether [REDACTED] is the person in the photograph (responding, “I don’t know, kind of” when [REDACTED] asks if the photograph looks like [REDACTED]). If Officer [REDACTED] had reasonable suspicion that [REDACTED] was the person in the photograph, and the person in the photograph was known to Officer [REDACTED] as potentially violent, it is reasonable to conclude that an officer in the same situation without the benefit of hindsight would have taken more precaution to ensure officer and bystander safety.
- Other statements by both officers during the interaction do not indicate an imminent threat, but rather signal a brief and non-accusatory interaction (e.g., Officer [REDACTED] states, “This can be easy by just having a conversation.”)

There are also situational factors that mitigate the possibility that Officer [REDACTED] reasonably perceived an imminent threat to his or others’ safety, including:

- There is no observable weapon or bulge on [REDACTED] clothing.
- [REDACTED] is not attempting to leave, nor does [REDACTED] appear violent or otherwise express aggressive or violent sentiment.
- The encounter took place in a busy corner store in front of several witnesses during daylight hours, and neither Officer [REDACTED] nor Officer [REDACTED] took steps that would be reasonably expected of an officer perceiving an immediate threat (e.g., consideration of the safety of the officers or other customers by having the interaction outside of a high-traffic area, temporarily detaining [REDACTED] in handcuffs, etc.)

Therefore, despite the lack of information regarding the photograph, by considering the totality of the facts and evidence it can be concluded that any suspicion that [REDACTED] posed an immediate threat to officer or bystander safety is not reasonable, and therefore does not satisfy the conditions necessary for a *De Bour* level 3 frisk for weapons.

The allegation that Officer [REDACTED] violated G.O. 415: Searches is recommended as sustained.

Allegation 4: Prejudice (General Conduct 4.2 (b)): Officer [REDACTED] made comments expressing racial prejudice.

The RPD’s Rules & Regulations General Conduct 4.2(b) states that officers shall not “express or otherwise manifest any prejudice concerning” race or other personal characteristics. As observable on Officer [REDACTED] body-worn camera footage, at 6:02 PM, [REDACTED] stated that [REDACTED] hadn’t done anything wrong, and that if officers believed [REDACTED] had, they should take [REDACTED] to jail. Officer [REDACTED] responded, “When that time comes, we will.” [REDACTED] was not engaging in observable criminal activity, and Officer [REDACTED] made this statement after he had established [REDACTED] was not the person he was looking for. It is reasonable to conclude that Officer [REDACTED] statements implied that [REDACTED] had or would in the future engage in criminal activity, and that this statement was based on [REDACTED] personal characteristics, including race, rather than any evidence of wrongdoing.

The allegation that Officer [REDACTED] made comments expressing racial prejudice is recommended as sustained.

Allegation 5: Prejudice (General Conduct 4.2 (b)): Officer [REDACTED] made comments expressing racial prejudice.



The RPD's Rules & Regulations General Conduct 4.2(b) states that officers shall not "express or otherwise manifest any prejudice concerning" race or other personal characteristics. At 6:03 PM, Officer [REDACTED] addressed the customers in the store at large, stating, "You know what? Here's what we're going to do. We're going to let all criminals go free, we're going to stop looking for people, and then it'll be a community problem." While the officer's comments are discourteous and unprofessional, it is not possible to conclude whether Officer [REDACTED] comments implied racial prejudice.

The allegation that Officer [REDACTED] made comments expressing racial prejudice is recommended as not sustained.

Allegation 6: Impairing public respect (General Conduct 4.1 (b)): Officer [REDACTED] made comments that impair public respect for the employee and/or the Department, and/or impair confidence in the operation of the Department.

The RPD's Rules & Regulations General Conduct 4.1 (b) states that officers shall not engage in conduct on or off-duty which "has a tendency to impair public respect for the employee and/or the Department, and/or impair confidence in the operation of the Department." As observable on Officer [REDACTED] body-worn camera footage, at 6:03 PM, Officer [REDACTED] addressed the customers in the store at large, stating, "You know what? Here's what we're going to do. We're going to let all criminals go free, we're going to stop looking for people, and then it'll be a community problem." By announcing that officers were no longer going to perform their law enforcement duties so that crime would become a "community problem," Officer [REDACTED] impaired public respect for the Department and undermined confidence in the Department's ability or willingness to perform their duties.

The allegation that Officer [REDACTED] made comments that impair the public respect for the employee and/or the Department, and/or impair confidence in the operation of the Department is recommended as sustained.

Allegation 7: Field Interview Intelligence Information Form (FIF) (G.O. 570): Officer [REDACTED] did not complete a FIF after interacting with and searching [REDACTED]

The RPD's General Orders require officers to "complete an FIF concerning any stop based on reasonable suspicion that the person stopped was committing, had committed or was about to commit a crime," and submit the form by the end of their tour of duty. Captain [REDACTED] was unable to locate any FIFs or incident reports related to the incident.

The allegation that Officer [REDACTED] failed to complete a FIF after interacting with and searching [REDACTED] is recommended as sustained.

Allegation 8: Field Interview Intelligence Information Form (FIF) (G.O. 570): Officer [REDACTED] did not complete a FIF after interacting with [REDACTED]

The RPD's General Orders require officers to "complete an FIF concerning any stop based on reasonable suspicion that the person stopped was committing, had committed or was about to commit a crime," and submit the form by the end of their tour of duty. Captain [REDACTED] was unable to locate any FIFs or incident reports related to the incident.

The allegation that Officer [REDACTED] failed to complete a FIF after interacting with [REDACTED] is recommended as sustained.



City of Rochester
Police Accountability Board
 Established 2019

245 E. Main Street
 Rochester, NY 14604

RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer [REDACTED]	Equitable Policing (G.O. 502): [REDACTED] was racially profiled and the stop was motivated by bias.	Exonerated
2	Officer [REDACTED]	Equitable Policing (G.O. 502): [REDACTED] was racially profiled and the stop was motivated by bias.	Exonerated
3	Officer [REDACTED]	Searches (G.O. 415): Officer [REDACTED] unwarranted search or "frisk" of [REDACTED] was unlawful.	Sustained
4	Officer [REDACTED]	Prejudice (General Conduct 4.2 (b)): Officer [REDACTED] made comments expressing racial prejudice.	Sustained
5	Officer [REDACTED]	Prejudice (General Conduct 4.2 (b)): Officer [REDACTED] made comments expressing racial prejudice.	Not Sustained
6	Officer [REDACTED]	Impairing public respect (General Conduct 4.1 (b)): Officer [REDACTED] made comments that impair public respect for the employee and/or the Department, and/or impair confidence in the operation of the Department.	Sustained
7	Officer [REDACTED]	Field Interview Intelligence Information Form (FIF) (G.O. 570): Officer [REDACTED] did not complete a FIF after questioning and searching [REDACTED]	Sustained
8	Officer [REDACTED]	Field Interview Intelligence Information Form (FIF) (G.O. 570): Officer [REDACTED] did not complete a FIF after questioning [REDACTED]	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 3 against Officer [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
Searches (G.O. 415) Officer Connor [REDACTED] unwarranted search or “frisk” of [REDACTED] was unlawful.	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 prior sustained violations): **60 day suspension**
- Explanation of deviation from presumptive penalty: This is Officer [REDACTED] first sustained violation.

Sustained Allegation 6 against Officer [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
Impairing Public Respect (General Conduct 4.1(b)) Officer [REDACTED] made comments that impair public respect for the employee and/or the Department, and/or impair confidence in the operation of the Department.	4

- 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**
- Explanation of deviation from presumptive penalty: This is Officer [REDACTED] first sustained violation.

Sustained Allegation 7 against Officer [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
Field Interview Intelligence Form (FIF) (G.O. 570) Officer [REDACTED] did not complete a FIF after questioning and searching [REDACTED]	2

- Recommended Level: 2 (“More than minimal 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): **5 day suspension**

Sustained Allegation 8 against Officer [REDACTED]

Disciplinary Matrix Appendix

Misconduct	Level
Field Interview Intelligence Form (FIF) (G.O. 570) Officer [REDACTED] did not complete a FIF after questioning and searching [REDACTED]	2

- Recommended Level: 2 (“More than minimal 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): **5 day suspension**