

Why RPD's pretext stops are raising concerns

Department doesn't track race of those pulled over, but impact demonstrates disparities regardless

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Marvin Taylor was less than a half mile away from his home when two Rochester police officers spotted his blue Hyundai sedan and punched the car's seven-digit license plate into their computer in the cruiser.

Expired inspection, the screen read. What started as a seemingly straightforward traffic stop ended with police shattering Taylor's window, pulling him from the car and almost immediately accusing him of hiding drugs. Police said the traffic stop escalated because Taylor refused to lower his car's tinted rear windows so officers could see inside.

Taylor called the incident an example of a pretext stop: A police maneuver where officers pursue low-level traffic violations with the hopes of fishing out evidence of more serious crimes. The practice is legal but often invites scrutiny. Critics of pretext stops argue they are applied disproportionately to communities of color and rarely turn up contraband.

Taylor, a 22-year-old Black man, said he's been stopped by police over a dozen times in the last few years and has had his car searched twice. He has no criminal record.

Three years ago, amid a national racial reckoning following the police killings of Black men like George Floyd and Daniel Prude, a consortium of local leaders compiled a list of reforms meant to challenge systemic racism in the Greater Rochester area. Among the Rochester community's priorities: End pretext stops.

Dozens of cities and police agencies are on a similar course. But the Urban League of Rochester's Candice Lucas said local efforts to end pretext stops have hit an "impasse" after resistance from the Rochester Police Department.

RPD defends the practice as a useful policing tool. Is it fair?

What is a pretext stop? Are they legal?

A 1996 U.S. Supreme Court case ruled that pretext stops are legal so long as there is an actual traffic violation that prompted the initial stop.

The court's decision in *Whren vs. United States* held that an officer's intent or motivation does not turn an otherwise lawful stop into an unconstitutional one. The Fourth Amendment offers some protection: In order for a cop to search your car for drugs or other contraband, the officer must have reasonable suspicion of a secondary crime.

Criminal justice researchers have pushed back on the court's ruling, arguing that while legal, pretext stops are not applied equally in all communities and cause more harm than good.

Many researchers have started to analyze all low-level traffic stops as potential pretext stops, noting it is hard to prove an officer's intent. These include technical violations for things like failing to use a turn signal, burned out headlights or hanging an air freshener from your rearview mirror.

"These are stops that are not conducted for any public safety reasons," said Rachel Marshall, the executive director of the Institute for Innovation in Prosecution at John Jay College.

Because of stringent road rules, she said, if an officer follows a car for long enough, they will almost always find cause to stop the driver on a minor traffic violation — and will often use that stop as a pretext to fish for evidence of other crimes.

Several studies have revealed racial disparities in who police officers are likely to pull over. Black drivers are ticketed for low-level traffic violations more often than white drivers. Meanwhile, other research shows less than 2% of traffic stops lead officers to drugs, guns or evidence of other crimes.

The fallout, Marshall said, is an erosion of trust in law enforcement and increased harassment of some community members without any benefit to public safety.



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"(People of color are) being pulled over based on these hunches of police officers that are often very much governed by implicit biases that lead them to be more suspicious of some demographics more than others," Marshall said. "If you've been subjected to humiliating stops as a Black man in Philadelphia, let's say, and you've been stopped repeatedly for these minor technical violations — that's going to create a real distrust in police."

Other low-level traffic stops have ended in tragedy.

Philando Castile was shot and killed by a police officer in St. Paul, Minnesota, during a traffic stop in 2016.

The 32-year-old had been stopped and ticketed by police for minor traffic violations at least 46 times in 13 years; only six of the tickets were for things police could have noticed from outside of a car, an NPR analysis found.

Without demographic data, Rochester lacks way to track disparities

A training bulletin by the Rochester Police Department codifies the use of pretext stops but includes a warning for officers that the policy "does not provide a blank check" to stop drivers based on their race, ethnicity or other discriminatory reasons.

But while nearby cities have implemented ways to track racial demographics on traffic stops, RPD has not — leaving us with little information on who officers here are pulling over.

In June, Capt. Greg Bello said RPD lacks the data because state-issued ticketing software does not include an option to document race. In fact, it does. The New York State Police, which manages the software known as TraCS, said a race field on traffic tickets is off by default but can be enabled by any police department.

When asked about the state's response, Bello said RPD is exploring the "feasibility" of that option. "We don't control TraCS, but it's definitely something that we're looking into," he said in September.

Earlier this summer Bello acknowledged the lack of data is a weakness in monitoring the department's use of pretext stops. "One of our biggest caveats on pretext stops is enforcement in terms of any sort of biases," Bello said. "Obviously our policies, our training guidelines, explicitly prohibit biases. How do you track it? How do you check that?"

RPD has partnered with Measures for Justice to develop a tool to analyze arrest demographics. Bello said the agency has considered whether it can use the tool to track the same information in traffic stops, but declined to commit to a timeline or any urgency on the issue.

Jill Paperno, a former Monroe County public defender who now works with the public interest law firm Empire Justice Center, said that data is needed to fully understand how pretext stops are used in Rochester.

Bello insisted police officers need additional cause to escalate a routine traffic stop into something bigger.

"That's not an automatic — hey, your lightbulb is out. We're going to search your car," he said. "It doesn't work that way. This isn't TV."

He said pretext stops are mostly used to arrest individuals who are already suspects in other crimes. An officer who might not have enough evidence to nab someone for a shooting might try to stop that suspect for a minor traffic violation with the hopes of finding the gun.

"Where I think you're getting at with pretext stops is when we start questioning about things other than the lightbulb or the turn signal, and that's

going to happen," he said. "At times there's other indicators that lead toward those conversations and that's not every traffic stop by any means. Frequently it is targeted. We know who's out with guns. We know who's out with the drugs."

Study: In Rochester, pretext stops not used in upscale areas

A study of a small sample of traffic data suggests Black drivers in Rochester are subjected to the same racial disparities in traffic stops seen nationwide, Paperno said.

Between 2020 and 2022, RPD recorded few or no traffic stops for failure to use a turn signal or riding a bicycle without a bell in the primarily white neighborhoods of Park Avenue, East Avenue and the South Wedge, or on bike paths frequented by suburban residents, an Empire Justice Center study found.

Residents in the northeast and northwest areas of the city — where more people of color reside — faced "substantially more ticketing" for the same violations, the report said.

Dismissing the Marvin Taylor traffic stop in Rochester

The Rochester police officers who stopped Marvin Taylor on May 7 were assigned to the violence prevention section.

In police reports, the officers wrote that they saw Taylor driving down Morrill Street and ran his license plate to find his overdue inspection. As they pulled behind him, the officers said Taylor snaked around the corners of Remington and Dale streets — two close turns that cover about 50 yards total — without using his turn signal.

Officers turned on their lights and sirens at the intersection of Remington and Dale. Police said Taylor "failed to immediately stop," but the police report shows he pulled over about 125 yards down the road — less than 10 houses away. Body-worn camera footage shows one officer approached Taylor's car with his gun drawn and repeatedly ordered him to lower his back windows so officers could see inside his car. Taylor refused but opened his driver's side window and asked the officers several times why they pulled him over. They

never answered.

After about two minutes, one officer smashed Taylor's window so others could pull him from the car.

"Bro, you got drugs on you," one officer says on the body-cam footage.

A search of Taylor's car did not turn up any illicit drugs. He was released with two traffic tickets and an obstruction of governmental administration charge.

A police report shows that even before they made it to Taylor's window, the officers had already clocked the man for more than just a simple traffic violation. After less than two minutes of following Taylor, with their lights and sirens on for only half that time, the officers decided the man was trying to evade them, according to the report. They claimed to have seen him shuffling around in the car.

"From my training and experience, when a driver behaves in this manner, it is because they are buying time to secrete a weapon and narcotics and may be looking for a suitable area to flee on foot for [sic] the vehicle," one officer wrote.

In this case, Bello said small actions came together to raise the suspicion of officers.

• Police were patrolling a high violence neighborhood.

• Taylor was driving a Hyundai with an expired inspection in a city that has seen devastating levels of car thefts targeting Kia and Hyundais over the last year.

• He made several quick turns and didn't stop right away — at least not by the officers' standards.

Taylor said he was just driving home. He lives on the next street over.

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Marvin Taylor, 22, describes where and how he was pulled out of his car on May 7 and arrested by Rochester Police. SHAWN DOWD/ROCHESTER DEMOCRAT AND CHRONICLE

"These are minor traffic infractions. There are other remedies that are less costly, less dangerous — both for the people being stopped but also for law enforcement officers themselves — and make better use of police resources."

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Pretext

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One state put limits on pretext stops. It didn't harm public safety.

Five years after Philando Castile was killed, law enforcement leaders in Ramsey County, Minnesota, announced they would steer their officers away from traffic stops for equipment violations.

The county's top prosecutor said he would no longer pursue cases for charges on secondary crimes found through pretext stops. Two police agencies developed a system where officers who saw a simple problem like a broken taillight could log the car's license plate information and send the driver a letter asking them to get it fixed.

Before the policy changes, Black drivers in Ramsey County were four times more likely to be stopped and nine times more likely to be searched than white drivers for minor, non-public safety vehicle violations, a study by the Justice Innovation Lab found.

After, equipment traffic stops on Black drivers dropped 66%. Low-level traffic stops dropped 86% altogether and searches fell 92%.

There was no discernible effect on public safety, the Justice Innovation Lab said.

"These are minor traffic infractions. There are other remedies that are less costly, less dangerous — both for the people being stopped but also for law enforcement officers themselves — and make better use of police resources," said Marshall, the criminal justice expert from John Jay College.

Other cities have taken up similar changes to end or limit pretext stops.

- Police in Philadelphia can no longer pull drivers over for eight low-level traffic violations, including expired inspection stickers.
- San Francisco names nine infractions on its list of banned traffic stops, and police there must now tell drivers why they were pulled over before asking any questions.
- Virginia and Oregon outlawed some stops statewide.
- Attempts for reform are underway in dozens of other states and cities,



Community members pray over Marvin Taylor at the end of a June 13 press conference outside of the Public Safety Building. JAMIE GERMANO/ROCHESTER DEMOCRAT AND CHRONICLE

though police unions have often opposed the changes.

Candice Lucas, from the Urban League of Rochester, said when community leaders gathered to draft recommendations for the Racial and Structural Equity Report in 2020, the topic of pretext stops was met with resistance from local police.

"It's not something they want to give up," she said. "We heard that loud and clear."

The commission recommended they end the practice anyway.

Lucas said the Rochester Police Department has taken up other reforms in the report, including the recruitment and hiring of more officers of color and enhanced community engagement under the direction of Deputy Chief Keith Stith, who was brought on in 2022 to

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help restore trust in the department. The two agencies also announced a partnership this summer, using a shared office space to find avenues for collaboration toward community needs.

"This is one where we're at an impasse," Lucas said about pretext stops.

The Urban League of Rochester is working with the Empire Justice Center to survey Rochester drivers about their experiences with pretext stops and ex-

plore whether legislative changes are possible.

A bill in the New York State Legislature last year sought to limit traffic stops for minor violations and would have required police to collect demographic data on who they are pulling over. It never made it out of committee for a vote.

"Law enforcement right now has the law on their side," Lucas said. "Right now, they're the decision makers on this. If they wanted to heed what the community said, they have the authority to say — OK, we're not going to do this. They have chosen not to do that."

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