

Approved

December 8, 2016



**ATLANTA CITIZEN REVIEW BOARD
MINUTES OF THE MEETING**

November 10, 2016
John C. Birdine Center
215 Lakewood Way, SW
Atlanta, Georgia 30315
404-865-8622
6:30 p.m.

The November 2016 meeting was called to order by *Chair Williams* at 6:34 p.m.

AGENDA

ROLL CALL

(The ACRB has thirteen members)

ACTIVE MEMBERS PRESENT

SHERRY WILLIAMS <i>(Chair/Williams)</i>	CECILIA HOUSTON-TORRENCE <i>(Torrence)</i>
PAUL BARTELS <i>((Secretary/Bartels)</i>	WILLIAM HARRISON <i>(Harrison)</i>
BILL BOZARTH <i>(Bozarth)</i>	GINO BROGDON <i>(Brogdon)</i>
GERALD SOUDER <i>(Vice Chair/Souder)</i>	HAROLD HARDNETT <i>(Hardnett)</i>
TRACEE MCDANIEL <i>(McDaniel)</i>	

ACTIVE MEMBERS ABSENT

None

VACANT BOARD SEATS

APAB-NPU, Group S – Z *(1 year and 6 months)*
City Council President *(5 months)*
Coalition for the Peoples' Agenda *(7 months)*
SHUNTAY PITRE *(Pitre) Confirmed by Council, Oath of Office Pending*

STAFF & CITY EMPLOYEES ATTENDEES

SAMUEL LEE REID, Executive Director *(Reid)*; **SHEENA ROBERTSON**, Investigation Manager *(Investigator Robertson)*; **ROBIN LOLAR**, Investigator, Sr., *(Investigator Lolar)*; **BRIAN FLEMING**, Investigator, Sr., *(Investigator Fleming)*; **MYOLA SMITH**, Project Manager *(Smith/Transcriber)*; **CHARLES CURRY**, Outreach Specialist *(Curry)*; **LYNN GARRETT**, Executive Assistant *(Garrett/Transcriber)*;

VIRGINIA ROBINSON, COA Law Department, (*Robinson*); **LIEUTENANT JESSE WEBB**, Atlanta Police Department, (*Lt. Webb*).

APPROVAL OF MINUTES OF THE LAST MEETING, OCTOBER 13, 2016

Chair Williams opened the floor for discussion and corrections to October 2016 minutes.

Note Correction: *Bartels* corrected page 12, line #6 under “Discussion.” He corrected statement to read: “I don’t think that there’s any evidence that he acted in bad faith.”

Bartels moved to adopt the minutes. *Houston-Torrence* seconded. Hearing no discussion, the motion was approved.

EXECUTIVE DIRECTOR’S REPORT

The following highlights were reported by *Director Reid*:

- **New Board Positions**

Executive Director *Reid* acknowledged the new ACRB member appointees: Tracee *McDaniel* appointed by the Mayor’s Office and Shuntay Pitre appointed by the Urban League of Greater Atlanta. Ms. *McDaniel* is already serving in the capacity of a board member. Ms. Pitre, although confirmed by City Council on November 7, 2016, the next and final step for her is to take the Oath of Office before she can officially take her seat on the board. Ms. Pitre is expected to be sworn in by the Municipal Clerk next week. We welcome Ms. Pitre to the Board.

- **Emailing Documents**

We will start providing confidential investigative files electronically soon to those individuals who would rather receive files electronically. The location on the website is under construction. All files will be password-protected to gain access. As soon as site has been enabled to share files, you will receive notice and instruction.

- **COVAP Training**

We held our first Community Outreach Volunteer Ambassador Program (COVAP) group training on October 22, 2016. Twelve citizens participated in the training. We are excited about the possibilities of deploying citizens throughout the city on the agency’s behalf. COVAP is a group started to leverage the time, talents, and resources of community volunteer members who are interested in moving the ACRB mission and message of police accountability forward.

- **Community Outreach**

The ACRB participated in Emerging Leaders Conference for Fulton County Youth sponsored by the Fulton County Board of Commissioners. Of the many workshops conducted, the ACRB received the highest evaluation from the students attending the conference. Other outreach activities for the month included: “Donuts with Dad” at Miles Intermediate School, Greenbriar Mall’s Fall Festival, and ACRB Day weekend events at Greenbriar Mall and Mall West End.

- **Police Ride-Along**

Members who have yet to complete a police ride-along form were reminded to complete and submit the document as soon as possible for review and approval by APD. Upon completion, it should be returned to the ACRB office.

- **Board Consideration for Policy Recommendation**

Over the past two months, the ACRB has investigated two complaints where officers have misplaced citizens' property. Last month, the Board raised a potential policy recommendation to address an officer who had lost a homeless individual's wallet that contained some of his important documents, such as his identification and birth certificate. The board expressed concern about the financial challenges homeless individuals face trying to replace those documents.

Director Reid reported that according to his research and review of APD policy, he did not find any policies that address procedural violations for mishandling or losing a citizen's property. The policies that were located, regarding the handling of citizen property, specifically addresses the procedures related to evidence handling, securing, and return from the property room, but nothing about mishandling or losing a citizen's property.

As mentioned during the October board meeting, the City has a claim process that citizens could use to receive restitution for the cost of lost documents and associated costs. The ACRB investigation could be used to support their claims. See attached City of Atlanta Claim Form and Instructions.

As it relates to this issue, the Board could recommend the following policy:

Officers who have misplaced or lost citizen important documents, such as identification card and birth certificate, while performing official duties shall use all reasonable methods to locate the citizen to advise of the City's claim process for restitution in order to secure a replacement.

Another option is for the ACRB to refer any sustained case involving this issue to the city attorney's office for restitution to secure replacement identification.

- **Board Training**

With the addition of two new board members, Ms. Tracee McDaniel and Ms. Shuntay Pitre, we will begin Board Training in December. I am requesting that we start the December board meeting at 5:30 p.m. The City Attorney's office would provide training from 5:30 – 6:30.

- **Anonymous Complaints**

We will kick off an anonymous complaint filing campaign. In March, when we had the ordinance change, which included the ability to accept anonymous complaints, since then, we haven't taken any action to really put it out there in the public just yet. Starting next week, we will begin taking some action to make sure that the public knows that we can now accept anonymous complaints.

Discussion and Comments...

1. *(Bozarth)* When we process an anonymous complaint, I assume that when we get the report on the investigation, same as we did, except, the name of the complainant is simply withheld? Is that what the anonymous process is?
2. *(Reid)* Yes. That would be the process. The way that we would precede with those types of complaints is that the citizen would have to understand that if they want to file anonymously and if they do not provide the name to us...we will not have a record of their name at all. It would be more like a citizen A, B, C...

3. *(Bozarth) The investigator would in fact talk to the complainant, just like they would do in a normal situation...*
4. *(Reid) Right, if it's the complainant who is actually filing the complaint; or maybe someone who's interested in the complaint being anonymous. Maybe an anonymous person, who is not the complainant, but just want to file it as well,*
5. *(Bozarth) But the person needs to explain what they thought the infraction was and will have to talk to the staff like anybody else. We're just not going to keep any records?*
6. *(Reid) Yes.*
7. *(Bozarth) Are we going to try and agree on some other (training) dates tonight? We all seem to be here.*
8. *(Reid) At first we were trying to find additional dates. The board chair and vice chair, we were talking about it; the first training we will try and do it at the December meeting. Starting the meeting an hour early, then try and pick up another evening to come in. So we will see about that. At this first training, we will be going over the ordinance, by-laws and Robert's Rules, a basic orientation. Typically, for the December meeting, we have a holiday celebration. We will probably scale it down some because we also have six cases that you will listen to. Hopefully, we will start at 5:30 p.m. and maybe we will have some light food at that time.*
9. *(Williams) Is everyone available at 5:30 for the December meeting? What is the actual date?*
10. *(Reid) December 8th. I will send out an email.*
11. *(Williams) Make sure that we have a quorum. Also, at the bottom of your report, you have the police ride-along. I think that Gino (Brogdon), Cecilia (Houston-Torrence) and... Hardnett...have you done a police ride-along?*
12. *(Hardnett) No.*
13. *(Williams) Is it possible for you guys to book one before the end of the year? You do not have to ride an entire shift. You just need to get the form filled out. Give it to Reid and take care of that.*
14. *(Hardnett) Does it matter what shift that you ride?*
15. *(Williams) It's your discretion. You can pick the shift and you can pick the zone. I promise you...once you do a police ride-along, you will never look at your neighborhood the same. I recommend all citizens do a ride-along; hint-hint staff, hint-hint people in the audience. It will really open your eyes and you will better understand how a lot of things happen and how a lot of things need to change and you can really be effective and change it in that way.*

INTAKE REPORT FOR OCTOBER 2016

Investigation Manager **Robertson** reported that for the month of October 2016, the ACRB received eleven (11) complaints.

A. COMPLAINT BREAKDOWN AND STAFF RECOMMENDATIONS:

The ACRB staff is seeking approval to possibly dismiss six (6) of the 11 complaints. All six complaints are waiting for signed complaints. It should be noted that the proper referrals were given to those citizens whose complaints fell outside of ACRB's jurisdiction. The following is a list of the complaints that are being recommended for dismissal and the reason for the recommendation:

1. ACRB Case No. 16-144 – Harassment
Awaiting complainant's signed complaint. If the signed complaint is received within the next few weeks, then recommend investigation as a harassment complaint as it pertains to APD only. If signed complaint is not received, then recommend dismissal.
2. ACRB Case No. 16-145 – Unlawfully Detained & Excessive Force

- Awaiting complainant's signed complaint. If the signed complaint is received within the next few weeks, then recommend investigation as a false imprisonment and excessive force complaint. If signed complaint is not received, then recommend dismissal.
3. ACRB Case No. 16-146 – Abuse of Authority
Awaiting complainant's signed complaint. If the signed complaint is received within the next few weeks, then recommend investigation as an abuse of authority complaint. If signed complaint is not received, then recommend dismissal.
 4. ACRB Case No. 16-148 – Inadequate Service
Awaiting complainant's signed complaint. If the signed complaint is received within the next few weeks, then recommend investigation as an appropriate action required complaint. If signed complaint is not received, then recommend dismissal.
 5. ACRB Case No. 16-151 – Inappropriate Conduct
Awaiting complainant's signed complaint. If the signed complaint is received within the next few weeks, then recommend investigation as a conduct complaint. If signed complaint is not received, then recommend dismissal.
 6. ACRB Case No. 16-152 – Inadequate Services & Inappropriate Behavior
Awaiting complainant's signed complaint. If the signed complaint is received within the next few weeks, then recommend investigation as an appropriate action required and conduct complaint. If signed complaint is not received, then recommend dismissal.

Investigation recommendations:

The following Five (5) cases are recommended for investigation:

1. ACRB Case No. 16-147 – Unlawfully Detained
The Complainant alleges that on October 7, 2016, he was unlawfully stopped and cited for not wearing a seatbelt by an APD officer. **Staff recommends investigation as false imprisonment complaint.**
2. ACRB Case No. 16-149 – Verbal Abuse & Inappropriate Conduct
The Complainant alleges that on October 17, 2016, he made an illegal U-turn and was stopped by an APD officer that was directing traffic near Twin Peaks on Lenox Road. He alleges that the officer called him the "N" word and threatened to take all of his money. **Staff recommends an investigation as an abusive language and conduct complaint.**
3. ACRB Case No. 16-150 – Inadequate Service & Inappropriate Behavior
The Complainant alleges that on October 4, 2016, an APD officer refused to provide her with assistance by failing to complete an incident report. She further alleges that the officer was dismissive and belittling towards her. **Staff recommends investigation as an appropriate action required complaint.**
4. ACRB Case No. 16- 153 – Rude and Threatening Behavior
The Complainant alleges that on October 26, 2016, an APD officer was extremely rude and threatening towards her. **Staff recommends investigation as a conduct complaint.**
5. ACRB Case No. 16-154 – Reckless Behavior
The Complainant alleges that on October 26, 2016, the APD who was transporting him to the Atlanta Detention Center (ADC) was driving erratically and caused him to hit his nose and head. **Staff recommends investigation as an appropriate action required complaint.**

RECONSIDERATION OF COMPLAINT

1. ACRB Case No. 16-075 – False Arrest, Excessive Force

In May 2016, the Complainant filed a false arrest and excessive force complaint against APD officers pertaining to an incident that occurred on May 23, 2016. ACRB's numerous attempts to obtain a statement from the Complainant have been unsuccessful. Therefore, **staff recommends dismissal for lack of cooperation.**

2. ACRB Case No. 16-083 – False Arrest, Excessive Force & Abusive Language

In June 2016, The Complainant had filed a false arrest, excessive force and abusive language complaint against APD officers pertaining to an incident that occurred on December 3, 2016. ACRB's numerous attempts to obtain a statement from Ms. Scarlett have been unsuccessful. Therefore, **recommend for dismissal for lack of cooperation.**

3. ACRB Case No. 16-138 – Inappropriate Conduct

In September 2016, The Complainant had filed a conduct complaint against an APD officer pertaining to an incident that occurred on September 22, 2016.

Preliminary investigation revealed that the involved officer is employed with the Pine Lake Police Department and not APD. Therefore, **recommend for dismissal for lack of jurisdiction.**

B. BOARD VOTES ON INTAKE REPORT

Bartels moved to accept the Intake Report for October. **Hardnett** seconded. Hearing no further discussion, the motion was approved.

COMPLAINTS REVIEW:

ACRB CASE NO 16-003, RAYMOND WASHINGTON

A. ALLEGATION SUMMARY

The Complainant alleged that on January 10, 2016, an APD officer followed him for approximately one block. The Complainant further alleged that as he walked down the street, the officer sped pass him and nearly struck him with his patrol car.

B. STAFF RECOMMENDATION

The ACRB staff recommends that the allegation of Appropriate Action Required against Officer Rawdon Lorde be assigned a finding of **not sustained** (*the investigation failed to prove or disprove that the alleged act(s) occurred.*

Discussion and Comments...

1. (**Bozarth**) *Looks like the officer in question went off duty at 10:30 p.m., and the complainant said that this occurred at 11:55 p.m. One hour and a half later?*
2. (**Fleming**) *Yes, after he was off duty.*
3. (**Bozarth**) *Was there any evidence that someone else had been assigned the car, so that it could have been another officer? The car was not on the road?*
4. (**Fleming**) *This officer was assigned the car after that. That is when the car was out on the road on that date and time. Anything after that, we don't have an answer for it.*
5. (**Bozarth**) *Could he have possibly had the number wrong?*
6. (**Fleming**) *I asked that, but he was adamant that this was the number. That's all that we had to go by.*
7. (**Hardnett**) *Could he have gotten the time incorrect?*

8. *(Fleming) Prior to me taking this statement, on record, I asked him to verify date and times. Those were the date and times that he said it happened. I asked him to clarify. Before we start the statement, this is what we have on your complaint sheet; this car number; this date; and this time. Is this correct? He said "yes." Then that is when we proceeded taking the statement.*
9. *(Souder) The report shows that he said that he called 911. They said that there is no record of that. Based on that and the fact that the officer was off prior to the incident allegedly happening, I would support staff's recommendation*

C. BOARD VOTES ON STAFF RECOMMENDATION

Souder moved to adopt staff's recommendation to assign a finding of **not sustain** for Appropriate Action Required against Officer Rawdon Lorde. *Hardnett* seconded. Hearing no further discussion, the motion was approved.

ACRB CASE NO 16-004, VINCENZO PALAZZOLA

A. ALLEGATION SUMMARY

The Complainant alleges that on July 29, 2015, excessive force was used against him by Atlanta Police Officers John Harwell, Theodore Travis and Jonathan Janke.

B. STAFF RECOMMENDATION

ACRB staff recommends that the allegation of Excessive Force against Officers Harwell and Travis be assigned a finding of **Not Sustained** (*the allegation failed to prove or disprove that the alleged act(s) occurred*).

ACRB staff recommends that the allegation of Excessive Force against Officer Jonathan Janke be assigned a find of **Sustained** as the force he used was unreasonable and unnecessary under the circumstances.

Discussion and Comments...

1. *(Souder) When I looked at it, I thought that I would agree with staff's recommendation, but after looking at the photos; even though police investigation said that it was within policy. My concern was...is the policy that vague or is there something else going on? The photos look a little more extreme than what I expect.*
2. *(Bartels) It says that Mr. Palazzola said that when he came to in the ambulance, he was naked. Did you find out anything about that?*
3. *(Lolar) No. There was no evidence that he was naked. According to paramedics, they escorted him to the ambulance. They started the...to treat him until after he was in psychiatrics.*
4. *(Harrison) I happen to agree that we will have to disagree with staff's recommendation because although what he was charged with is despicable, you have to pay attention to what happened in the park. The interview from his wife/girlfriend indicates that they were walking...stopped and were attacked by the police officers...am I correct?*
5. *(Lolar) No, actually Ms. Matthews was retaining him at the park as she called 911 to have him arrested from the incident that took place the day prior where he poured the flammable lighter fluid on her and tried to set her on fire. So she called 911 and discretely called them to give them directions of where he was located and detained him there until he arrived. Once the officer arrived, which was Officer Harwell, who was the first officer to response to the scene, arrived and attempted to make contact with Mr. Palazzola, that's when he proceed to walk away from the officer.*

6. **(Harrison)** *As she is giving her interview with the Sergeant Genson, she said that, "I don't really know what time I called, but it was sometime not too long ago. So, he's walking way up in front. I'm walking way in the back, and I discretely called the police." I don't see any incident of him trying to flee at that point.*
7. **(Lolar)** *They were walking from the liquor store...they stopped at the liquor store; that's where Mr. Palazzola purchased some liquor for himself. She remained outside. While outside that is when she made the discrete call. Then they started heading toward the park and as she's walking to the park, she is still on the phone...I believe that she is still on the phone with the 911 operator. That's what she means about they were walking away. Once they got to the park, they stopped under the pavilion and that is when...after they stopped, according to Mr. Palazzola, they stopped there and asked if he had a few drinks. Then Officer Harwell arrived on the scene. So what she is referring to the walking, they are walking from the liquor store to the park.*
8. **(Houston-Torrence)** *They did state several times that he resisted...I believe Officer Harwell kept saying that he resisted.*
9. **(Harrison)** *My point being is that, prior to him being attacked by the first officer...what precipitated the attack? Did he run? Did he attack the officer? Did the officer attack him? I don't see that in the report. What I see is that he was standing still and he was attacked by the officer.*
10. **(Lolar)** *He was walking; according to the evidence. The information filed during the investigation. He was walking away from the officer when the officer was attempting to make contact with him. The officer was attempting to make contact with him due to the incident that happened the day prior; which at that point, the officer was making an investigatory stop to inquire more...because he was a suspect for a possible assault by pouring the flammable liquid onto Ms. Matthews. The officer was attempting to make contact with him and then when he walked away, I believe that is when the officer placed his hands on him and then he turned around and the struggle ensued.*
11. **(Bozarth)** *You made a distinction here in your recommendation on Officer Harwell; said that you recommend to not sustaining the charge; you recommend sustaining the charge against Officer Janke because of the use of the baton which you felt was excessive force.*
12. **(Lolar)** *It may have been excessive. That is correct Sir.*
13. **(Brogdon)** *Did the officer say why he used the baton?*
14. **(Lolar)** *I was not able to interview the officer. Because as of November 4, 2015, Officer Janke was no longer with the department.*
15. **(Brogdon)** *I would agree with staff's recommendation.*
16. **(Bartels)** *We might have to take two separate votes because there were two incidents. One was while he was being apprehended and the other was when he was inside of the ambulance.*
17. **(Williams)** *The issue number one is whether force was used to apprehend Mr. Palazzola was reasonable and necessary based on the circumstances; issue number two is, was physical force used by Officer Janke inside the ambulance against Mr. Palazzola reasonably necessary. On issue number one, we can take both the staff recommendations under issue number one separately. So is there a motion for issue number one for Officers Harwell and Travis?*

C. BOARD'S VOTE ON ALLEGATION OF EXCESSIVE FORCE ON OFFICERS JOHN HARWELL & THEODORE TRAVIS

Issue number one: Whether the force used to apprehend Mr. Palazzola was reasonable and necessary based on the circumstances.

Chair Williams opened the floor for a motion. **Bozarth** moved to accept staff's recommendation to assign a finding of **not sustained** for **excessive force** allegation against Officers Harwell and Travis.

Bartels seconded. Hearing no further discussion, the vote was called and the motion was approved with two opposing votes (**Harrison and Souder**)

D. BOARD'S VOTE ON ALLEGATION OF EXCESSIVE FORCE ON OFFICER JONATHAN JANKE

Second Question at Issue: Was physical force used by Officer Janke to 'apprehend' Complainant reasonable and necessary?

Chair Williams opened the floor for a motion. **Houston-Torrence** moved to accept staff's recommendation to assign a finding of **sustained** for excessive force allegation against Officer Janke. **Bartels** seconded. Hearing no further discussion, the vote was called and the motion was approved.

Discussion and Comments...

1. (**McDaniel**) The officers who are no longer employed with APD...what happens with whatever findings against them?
2. (**Lolar**) If they come back to the department, they can still be held accountable.
3. (**Bartels**) Also if they try to go to another department.
4. (**McDaniel**) So this goes on their record?
5. (**Lolar**) Yes.

E. BOARD VOTE ON ALLEGATION OF EXCESSIVE FORCE INSIDE THE AMBULANCE AGAINST OFFICER JANKE

Issue Number Two: Was the physical force used by Officer Janke 'inside the ambulance' against Mr. Palazzola reasonably necessary?

ACRB staff recommends that this Excessive Force allegation against Officers Jonathan Janke be assigned a finding of "**Not Sustained**" (insufficient evidence to conclude that the officer committed the alleged act of misconduct).

Chair Williams opened the floor for a motion. **Bartels** moved to accept staff's recommendation to assign a finding of **Not Sustained** against Officer Jonathan Janke. **Brogdon** seconded. Hearing no further discussion, the vote was called and the motion was approved with two opposing votes (**Harrison & Houston-Torrence**).

F. BOARD'S DISCIPLINE RECOMMENDATION FOR OFFICER JONATHAN JANKE SUSTAINED COMPLAINT OF EXCESSIVE FORCE WHEN APPRENDING COMPLAINANT

Discussion and Comments...

1. (**Bozarth**) If the officer in question is no longer on the force...does that recommendation have any effect? Does that go in the record Robin (**Lolar**)?
2. (**Williams**) Doesn't it go on the record since Officer Janke is no longer on the force?
3. (**Lolar**) I'm not sure.
4. (**Reid**) We definitely want to go and make our decision. We normally would because the officer could come back to the force. APD will do an investigation also on this complaint; and make whatever decisions they need to make. So, yes.
5. (**Williams**) So do you have his jacket?

Officer Information and Professional Standards History Officer Janke has had three complaints. Two were exonerated (Appropriate Action Required); one was a reprimand (Corruption) sustained under Category B.

Discussion and Comments...

1. *(Bartels) What would that be?*
2. *(Lolar) For corruption in 2015.*
3. *(Harrison) So he has only one charge against him?*
4. *(Lolar) One sustained complaint.*
5. *(Bartels) (referring to the corruption charge) Do they say what that involves?*
6. *(Lolar) No. Don't have that information.*
7. *(Souder) Is that a category C? The current one...excessive force.*
8. *(Lolar) That would be a "C"!*
9. *(Williams) 4-15 days or demotion.*
10. *(Bartels) I think that something within that range will be appropriate.*

Harrison moved to recommend that Officer Janke receive a 15-day suspension for allegations for excessive force. **Houston-Torrence** seconded. Hearing no further discussion, the vote was called and the motion was approved

ACRB CASE NO 16-012, DEANTE NESMITH

A. ALLEGATION SUMMARY

The Complainant alleged that on January 27, 2016, an APD Officer used excessive force against him when he grabbed him from behind, picked him up in the air and slammed his face down to the ground. The Complainant also alleged that while he was face-down on the ground and his back was "stomped" on and his head pushed into the ground by an unidentified officer.

B. STAFF RECOMMENDATION

ACRB Staff recommends that the Excessive Force allegation against Officers Michael Jones, Philip Skidmore and Kenneth Wilson be assigned a finding of "**Not Sustained**" (*there is insufficient evidence to conclude that the officers committed the alleged acts of misconduct*).

Discussion and Comments...

1. *(Houston-Torrence) He denied discarding a gun...they later found that. Am I correct?*
2. *(Williams) They found it within 10 yards from where he got out of the car and ran. They also found a holster in that general area.*
3. *(Bartels) That was stated in the evidence.*
4. *(Lolar) That is correct. I believe that the Property Report is attached to your package.*
5. *(Williams) And it was loaded with a magazine with one bullet in the chamber. Correct?*
6. *(Lolar) That is correct.*
7. *(Bartels) I would also factor in that he eventually entered a guilty plea.*
8. *(Lolar) To the firearm.*
9. *(Williams) And he was recently out of jail. Correct?*
10. *(Lolar) No. He is incarcerated at Calhoun.*
11. *(Bozarth) Robin (Lolar) is recommending not sustaining the charges and I agree with that. With all of this drug paraphernalia and money and everything else they found...decided to nolle prosequi (legal phrase meaning "be unwilling to pursue", or "do not prosecute"). They were only prosecuted for the lesser offense. I was curious as to what had happened.*
12. *(Bartels) Without actually looking at DA's case file; which is not an open record, there is no way to tell what happened. It's possible that they weren't dismissed against them. I think that it was just against him?*

13. *(Lolar) No...Ms. Sheffield who was with him at the time, she also had charges pending on her. They were also noted, but the only thing that I can think of is that he was on parole at the time; and had the firearm...*
14. *(Bartels) They would also have to send him to juvenile ...it's possible that they decided not to do that.*

Chair Williams opened the floor for a motion. **Bartels** moved to accept staff's recommendation to assign a finding of **Not Sustained** against Officers Michael Jones, Philip Skidmore and Kenneth Wilson. **Houston-Torrence seconded**. Hearing no further discussion, the vote was called and the motion was approved.

STAFF ADDITIONAL RECOMMENDATIONS

- a. Ensure that Sergeant Michael Wolfe is re-trained on his supervisory duties and responsibilities pertaining to incident reports.
- b. Ensure that Officer Michael Jones is re-trained on incident report writing and on how to electronically attach relevant information to incident/arrest reports.

Chair Williams opened the floor for a motion. **Souder** moved to accept staff's additional recommendations for Officers Wolfe and Jones. **Bartels** seconded. Hearing no further discussion, the vote was called and the motion was approved.

ACRB CASE NO 16-050, WILHY HARPO

A. ALLEGATION SUMMARY

The Complainant alleged that on March 13, 2016, while being booked at the Atlanta Detention Center, Officer Scott Mincey intentionally withheld his paperwork and prolonged his booking process.

B. STAFF RECOMMENDATION

ACRB Staff recommends that the allegation of Abuse of Authority against Officer Scott Mincey be assigned a finding of **Unfounded** (as the investigation established that the officer did not commit the alleged acts of misconduct).

Discussion and Comments...

1. *(Bozarth) We are getting more complaints from this part of the process; most of them have been APD. These are correction officers. Again, we don't have anything happening here. (Regarding the use of body cameras) Is it unrealistic to expect that was then available in a situation like this?*
2. *(Lolar) Yes, they do have surveillance cameras. There are surveillance cameras in the some areas.*
3. *(Bartels) What is the retention period?*
4. *(Lolar) Fifteen days, but these are only surveillance cameras.*
5. *(Bartels) And the body worn cameras are worn when?*
6. *(Robertson) Body worn cameras are also used inside the jail, but only in certain instances. It is not on continuous mode. The policy here is it has to be on with unruly inmates, medical emergencies, and special management grounds responding to critical events to name a few instances.*
7. *(Bartels) They are supposed to turn them on before...correct? You see the problem with that, because if there is no footage available other than the alleged incident. There are two*

possibilities; one is that the incident didn't happen and it's an unfounded allegation. The other possibility is that it did happen and the officer didn't turn on the body camera.

8. **(Lolar)** The officer did not have a body worn camera on at that time.
9. **(Williams)** Is there an average of amount of time it would take for someone to come in and come out...because obviously, he had medical treatment too? So he came in on the 13th; about 2:30 p.m., then he was released the next day at 12:50...
10. **(Bozarth)** I think that he got fined. He stayed in jail for six days because of disorderly conduct. His complaint was that...had the officer processed him quickly, he could have made a court date on unrelated matters. That's what he was complaining about.
11. **(Lolar)** His complaint was that he felt that Officer Mincey intentionally detained or prevented him from going through the process. Because he was denied entrance into the jail...to go through the process. That came from the medical staff. He did complain that he had prior injuries before coming to the jail. Their protocol is...you're going to Grady Detention to be checked out before we take you to the adult detention center to be booked. However, the booking process went with him to Grady. It didn't stop. There was nothing that Officer Mincey would have control over whatsoever.
12. **(Harrison)** With regards to the county jail...5-7 hours to check in; 8-10 hours to check out.
13. **(McDaniel)** If a detainee is arrested, and they have a pending court date, what are they supposed to do then?
14. **(Lolar)** If the pending court date is dealing with their criminal charges, or the reason why they are there at the jail, they will make sure that they attend their court appearance. However, the court date that Mr. Harpo was referring to was some other personal civil thing that he had going on and he felt that he should have had access to the paperwork; to go to the court date and that is not their protocol.
15. **(Bartels)** In a case like that, a civil case, the judge would have to ask for production orders. It's not done as a routine.
16. **(Lolar)** He never produced any documents.

C. BOARD VOTES ON STAFF RECOMMENDATION

Chair Williams opened the floor for a motion. **Bartels** moved to accept staff's recommendation to assign a finding of **Unfounded** against Officers Scott Mincey. **Houston-Torrence** seconded. Hearing no further discussion, the vote was called and the motion was approved.

Discussion and Comments...

1. **(Bozarth)** I would suggest...he had some complaints about his incarceration. Would it be appropriate that we send a letter to that department? I have no reason to think that the complainant would have made that up. Is that something that we want to take on?
2. **(Reid)** That really doesn't fall under our jurisdiction...if it's something that you notice, you just want to state it the best that you can. They are not under any obligation to follow-up.
3. **(Bozarth)** I know that. Right. What are some of the views the board thinks about that?
4. **(Robertson)** When Mr. Harpo filed his complaint, I took his intake. I explained to him that we don't have jurisdiction and he was referred to Office of Professional Standards (OPS). Corrections have a process just like APD.
5. **(Bozarth)** Conditions within the jail?
6. **(Robertson)** Yes.
7. **(Lolar)** They have civilian advocates for the inmates inside. When there are issues like what Mr. Harpo is dealing with, they have a process where they will write up their complaint, then send it over to the civilian advocates to process it and see it through.

ACRB CASE NO 16-068, LENARD MILLER

A. ALLEGATION SUMMARY

The Complainant alleged that on April 28, 2016, an APD officer that was the driver of the patrol car that stopped him engaged in unnecessary excessive force when the officer repeatedly struck him in the face causing injuries to his left eye.

APD records indicate that Officers James Spear and Leon Delain were involved in this incident. However, the records do not indicate which officer was the driver of the vehicle; therefore, for purposes of this investigation, both officers were treated as subjects.

B. STAFF RECOMMENDATION

ACRB staff recommends that the allegation of Excessive Force against Officer Leon Delain be assigned a finding of **Sustained** (*the investigation established that there is sufficient evidence that the officers committed the alleged acts of misconduct*).

However, the ACRB staff recommends that the allegation of Excessive Force against Officer Spears be assigned a finding of **Unfounded** (*the investigation established that the officer did not commit the alleged acts of misconduct*).

C. BOARD VOTE ON STAFF RECOMMENDATION TO SUSTAIN OFFICER DELAIN COMPLAINT

Discussion and Comments...

1. **(Brogdon)** *I thought this case was exactly why this board was created. I thought that you did a great job in terms of the investigation. There are two conflicting stories...the officer, and you kind of hit the nail on the head in my opinion. The damage to his face was not like he tripped and fell. He looked like he was hit in the face. With the two totally different stories as to how he hurt himself, I think that's why we are in existence today. I totally agree with you.*
2. **(Bartels)** *This is why body worn cameras are needed.*

Chair Williams opened the floor for a motion. **Bozarth** moved to accept staff's recommendation to assign a finding of **Sustained** against Officers Delain. **Bartels** seconded. Hearing no further discussion, the vote was called and the motion was approved.

D. BOARD VOTE ON STAFF RECOMMENDATION TO FIND ALLEGATION OF EXCESSIVE FORCE AGAINST OFFICER SPEAR AS UNFOUNDED

Discussion and Comments...

1. **(Brogdon)** *I agree with that but, he also lied to cover his fellow officer. While that is a part of the charge, there has to be something that we can do. Is there something that we can do?*
2. **(Robertson)** *You can recommend that APD look into the officer's statement to determine whether or not they want to pursue charges against officer for that.*
3. **(Brogdon)** *Is that the limitation of what we can do if it's basically unfounded?*
4. **(Robertson)** *Yes, because the allegation was excessive force.*
5. **Bartels)** *I don't think that we have jurisdiction to determine truthfulness if it doesn't come under one of the categories.*

Chair Williams opened the floor for a motion. **Bozarth** moved to accept staff's recommendation to assign a finding of **Unfounded** against Officers Spear. It was also recommend that the Office of Professional Standards review Officer Spear's statement for truthfulness and take appropriate action against him that is in accordance with the department's disciplinary matrix. **Houston-Torrence** seconded. Hearing no further discussion, the vote was called and the motion was approved with one opposing vote (**Harrison**).

E. BOARD'S VOTE ON SUSTAINED ALLEGATION OF EXCESSIVE FORCE – OFFICER DELAIN

Officer Information: Officer Delain has been employed with APD for five years. He has had other complaints launched against him; one was for a vehicle accident which is still pending; one is for Use of Force case, which is still pending (*case with ACRB*); two complaints in which he was exonerated and the other two complaints he received written reprimands (*sleeping on duty and working an extra job without approval*).

Discussion and Comments...

1. **(Robertson)** This would be a category C; which would be a 4-15 day suspension. You can also recommend training and psych evaluation.
2. **(Williams)** The two that were written reprimands were...?
3. **(Robertson)** The two w written reprimands were for sleeping on duty and working an extra job without approval.
4. **(Williams)** The two that were exonerated were?
5. **(Robertson)** One was that the complainant had alleged that Officer Delain had falsely arrested the complainant for a stolen gun and marijuana and the car did belong to her. The other one was the complainant alleged that Officer Delain and others took too long to respond to a hit and run and was insensitive and wrote her a ticket for not having a driver's license.
6. **(Bozarth)** There is no history in his jacket about excessive force?
7. **(Robertson)** No. So, this will be a category C, 4-15 days suspension.
8. **(Bozarth)** We really believe that he did it, but on the other hand, there is no history. The range for this is?
9. **(Williams)** Four to fifteen days, demotion, training, psychological intervention...
10. **(McDaniel)** You said demotion?
11. **(Robertson)** There's nothing to demote him to.
12. **(Williams)** Proactive correction can be training. It can also be psychological intervention. The third on is mandated substance abuse program. That is not applicable.
13. **(Bartels)** Unless there's an indication.

Bartels moved to recommend that Officer Delain receive a 10-day suspension and Use of Force training regarding the excessive force allegation. **Brogdon** seconded. Hearing no further discussion, the vote was called and the motion was approved.

Note:

What happened to Board decision to discipline sustained vote?

ACRB CASE NO 16-092, XAVIER CLARK

A. ALLEGATION SUMMARY

The Complainant alleged that when he was in Housing Unit 5NW during his incarceration at the Atlanta Detention Center, Atlanta Corrections Officer Durwin Sims was verbally abusive and unprofessional towards him.

B. STAFF RECOMMENDATION

ACRB Staff recommends that the allegation of Abusive Language against Officer Sims be assigned a finding of **Not Sustained** (*the investigation established that there is insufficient evidence that the officer committed the allege acts of misconduct*).

C. BOARD'S VOTE ON ALLEGATION FOR ABUSIVE LANGUAGE – OFFICER SIMS

Discussion and Comments...

1. **(Souder)** *From what I read, there was no video at the incident, no witnesses...it's like a he said, she said. Based on investigator's report and recommendation of not sustained, on both abusive language and appropriate action...in addition to that, APD officer was hurt when he was apprehending the subject according to the file. I emailed Investigator **Robertson**...it had to do with the body worn camera. The officer had it on, but it wasn't activated. After looking at the policy, there is no requirement to turn it on to listen to the incident.*
2. **(Bartels)** *Just to clarify, the complainant is not able to say specific words that Officer Sims said he used?*
3. **(Robertson)** *Correct. The only thing that he can recall is when he told him to "shut up!"*
4. **(Bozarth)** *Did Mr. Clark seem credible when you talked with him in terms of being sincere about it?*
5. **(Robertson)** *Mr. Clark's interview was done over the phone. I didn't find anything to say that he wasn't credible. But so was Officer Sims.*
6. **(Bozarth)** *Last month we had one where we did not sustain the complaint against the correction officer...we guess that he did not have the camera on when he should've. While we got these two in front of us...lets maybe get an understanding when the body worn camera within the city jail should be on.*
7. **(Robertson)** *In that instance, we agreed with the fact that we found that there was evidence that he was put into a holding cell. Whether or not he was unruly; that was the reason why he was in the holding cell; while you are in intake. So when you read that something happened, therefore, that was grounds for him to have on his body worn camera. That is why we found him in violation of that procedure because he didn't have it on. Had he had it on, we would have known whether or not he was justified in putting the complainant into the holding cell.*
8. **(Bartels)** *This demonstrates that problem... or at least with the man at the detention center that if something does happen and there is no footage; is it because something really didn't happen... Officers out on the streets, they are not constantly in contact with people. When they come in contact with people, they turn it on. At the jail, with staff, I guess it is constantly.*
9. **(Williams)** *We do have their guidelines.*
10. **(Bozarth)** *When there is no confrontation with the officer, or officers, there would be no real reason to turn the camera on.*
11. **(Robertson)** *In this case, he was not required to have his body worn camera; but in that previous case, he should have had his body worn camera on because the issue was that he was unruly and that is why he was placed in the holding cell.*

Chair Williams opened the floor for a motion. **Bartels** moved to accept staff's recommendation to assign a finding of **Not Sustained** against Officer Sims with regards to the Abusive Language allegation. **Brogdon** seconded. Hearing no further discussion, the vote was called and the motion was approved.

D. BOARD'S VOTE ON ALLEGATION FOR APPROPRIATE ACTION REQUIRED – OFFICER SIMS

Chair Williams opened the floor for a motion. **Bozarth** moved to accept staff's recommendation to assign a finding of **Not Sustained** against Officer Sims. **Houston-Torrence** seconded. Calling for the vote and hearing no further discussion, the motion was approved.

OLD BUSINESS

APD:

- *Regarding Body Worn Camera Training discussed at the last meeting, Reid indicated that*
- *Unfortunately, there was no additional word from APD on the training and an invitation for ACRB to attend. Deputy Chief Joseph Spillane, who made the presentation, will be leaving the APD and it is not known at this time who his replacement will be or who is considered the next person in charge.*
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- *Regarding the training at the center, Chair Williams asked staff to follow-up and provide the information at the next meeting. “If there is a training meeting prior to that, staff will be able to send us an email to see who is available.” Harrison indicated that he has a meeting with APD on Monday and will let the board know what he finds out.*

Veterans Day

Chair Williams announced that tomorrow is Veteran’s Day and expressed appreciation to all veterans for service to our country.

NEW BUSINESS:

PUBLIC COMMENTS:

No Public Comments

ADJOURNMENT

No further business, by show of consensus, the meeting adjourned at 7:45 P.M.

ACRB Minutes for November 10, 2016 were approved: December 8, 2016
Paul Bartels, Board Secretary

Transcribed: LG