



ATLANTA CITIZEN REVIEW BOARD
MINUTES OF THE LAST MEETING
55 Trinity Avenue, SW, Committee Room Two
Atlanta, Georgia 30303
October 13, 2011, 6:00 P.M

ROLL CALL

MEMBERS PRESENT

PAMALA ALINIECE (<i>Aliniece</i>)	CHARIS JOHNSON (<i>C. Johnson</i>)
PAUL BARTELS (<i>Bartels</i>)	ALAN MORRIS (<i>Morris</i>)
WILLIAM HARRISON (<i>Harrison</i>)	JOY MORRISSEY (<i>Chair/Morrissey</i>)
BARBARA HUBBARD (<i>Hubbard</i>)	RUTH PRICE (<i>Price</i>)
RYAN JOHNSON (<i>R. Johnson</i>)	MACEO WILLIAMS (<i>Williams</i>)

Vacant Appointments to the Board
Office of the Mayor (vacant 3 months)

STAFF ATTENDEES

MARC ADDINGTON, Investigator (*Addington*); **CRISTINA BEAMUD**, Executive Director (*Director/Beamud*); **WILLIAM CASTING** (*Casting*) *City Law Department, Assigned Board Attorney*; **SHEENA ROBERTSON**, Investigator (*Robertson*); **MYOLA SMITH**, Transcriber (*Smith*)

A G E N D A

MEETING CALLED TO ORDER:

The meeting opened at 6:00 p.m. with a special training presentation on Ethics, facilitated by the City of Atlanta, Office of Ethics staff, led by Acting Director, Jabu Sengova. Ms. Sengova's presentation focused on the purpose of the Ethics Code, public's trust of Atlanta City Government and Conflicts of Interest. She said, "The purpose of our code, besides protecting City Government, is promoting the public's trust. We want the public to have positive thoughts about Atlanta City Government. One of the things the code focuses on is Conflict of Interest. Your official duties should be your first priority and the best interests of the City should come first. You should not participate in transactions that interfere with your independence or your objectivity. We want the public to look at you and say, "Here is an official doing their duties and that is an official who is fair and objective."

Other sub-topics covered under Conflict of Interest included: doing business with the city; appearing before a city agency; compatible business interest; use of city property; making ethical decisions and the one year *cooling-off* period after leaving City service.

At the end of the training, each member, as a volunteer city official, was asked to read, sign and date an ethics pledge committing to promote integrity in City Government and placing the best interest of the city over any financial or personal interest.

Following the training, the board meeting was officially called to order at 7:00 p.m. The *Chair* welcomed everyone including members of the Atlanta Police Department, Office of Professional Standards: Major Elder Dancy and staff.

APPROVAL OF MNUTES OF THE LAST MEETING (Agenda Item II):

The *Chair* entertained a motion to approve the minutes of the last meeting held September 8, 2011 at 6:30 p.m. It was moved by *Bartels* to accept the minutes of the last meeting. The motion was seconded by *Williams*. No discussion, the minutes were approved with no corrections.

CONSIDERATION OF INVESTIGATION OF FALSE IMPRISONMENT ALLEGATION IN CASE #11-16, COMPLAINT OF OLAJUWAN WILSON, EMS TRIP REPORT AND DISCIPLINARY RECOMMENDATIONS - INVESTIGATION BY SHEENA ROBERTSON (Agenda Item IV)

A. EMS TRIP REPORT

Robertson reported that at the last board meeting, the Board asked for a couple of things regarding the Wilson case that was discussed at the September's meeting. One of the items requested was the EMS trip report and a copy of the report was included in the information packets. The question from the Board was whether or not there were any visible injuries on his person when EMS examined Mr. Wilson. While the report indicates there were no visible injuries or bruising found on his body, it indicated that Mr. Wilson vomit three times during the examination.

B. CASE LAW REGARDING FALSE IMPRISONMENT

The second thing requested by the Board was for the staff to research case law to see if this incident could also fall under false imprisonment. *Robertson* included a memo to the Board regarding whether or not Mr. Wilson was falsely imprisoned when he was stopped and detained by Atlanta Police Officer Jonathan Cornelius on September 28, 2010.

Robertson reported that the case law is well settled that the Fourth Amendment to the U.S. Constitution protects citizens from unreasonable searches and seizures. An officer is authorized to stop a citizen only if the officer reasonably suspects that a person has committed, is committing, or is about to commit a crime. *See Terry v. Ohio, 392 U.S. 1 (1968).*

The officers in this case, contend that the reason they stopped Mr. Wilson was because he was standing in front of a store that is located in a high crime area. They alleged that when Wilson noticed them, he quickly looked around, shoved his hands into his pants, as if he was trying to conceal something and swiftly walked into the store. Mr. Wilson refutes the officers' claim and contends he was already inside the store purchasing some items for his mother when the officers drove up.

During the course of the investigation into Mr. Wilson's excessive force complaint, ACRB reviewed the circumstances surrounding the stop in an attempt to locate any eyewitnesses to the incident. As indicated in the report, the ACRB staff could not locate any individuals that may have witnessed the stop that could corroborate either the officers' or Mr. Wilson's version of the incident. However, even assuming the facts described by the officers are true, the question is whether or not these factors were enough to constitute "reasonable suspicion" to justify an investigatory stop of Mr. Wilson. The Supreme Court has held that in determining the grounds for a stop, "the totality of the circumstances—the whole picture—must be taken into account and based upon that whole picture, the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity" (*see United States v. Cortez, 449 U.S. 411, 101 S.Ct.690, 66 L.Ed.2d 621 (1981).*

Even if Mr. Wilson was at a store located in a "high-crime area," his mere acts of looking around, shoving his hands into his pants and walking into the store at a quickened pace, when he noticed the officers was not

sufficient to justify a Terry stop. First, it is well established that at a person's presence in a high crime area, standing alone, does not meet the Fourth Amendment requirement of particularized suspicion that a person has committed, is committing, or is about to commit a crime (*see Jackson v. United States*, 805 A.2d979 (D.C. 2002)). Furthermore, Mr. Wilson was alone at a store in the middle of the day, had not been observed conversing or interacting with others suspected of illegal activity, was not the subject of a crime report and in no other way associated with criminal activity at the time the officers noticed him standing in front of the store. Additional, Mr. Wilson did not engage in headlong flight upon seeing the officers. Rather, he merely walked swiftly into the store.

Based upon these facts, the staff concludes the officers lacked reasonable suspicion to stop Mr. Wilson. Therefore, we find that Officer Cornelius falsely imprisoned Mr. Wilson when he stopped and detained him on September 28, 2010 without adequate legal justification. Officer Cornelius is in violation of APD SOP.3020, as well as, Mr. Wilson's Fourth Amendment rights.

It is noted that during the course of the investigation, ACRB obtained and reviewed the Fulton County Superior Court's records as it relates to Mr. Wilson's criminal case concerning this incident. According to the records, during Mr. Wilson's suppression hearing, the judge also stated that the officers lacked "reasonable suspicion" of Wilson based on the same set of factors.

C. ACRB STAFF RECOMMENDATION.0

In summary of this information, **Robertson** stated, "Not only do we find the allegations of Excessive Force, as discussed at the last board meeting, alleged against Officers Robert Godwin, James Devoto and Dimitri Caldwell be assigned a finding of sustained, we also recommend that the allegation of False Imprisonment against Officer Jonathan Cornelius be assigned a finding of sustained."

D. VOTE BY THE BOARD TO ACCEPT RECOMMENDATION

Following the summary and recommendation, the **Chair** opened the floor for questions.

Discussion & Questions...

1. **Price** asked **Robertson**, "What is the basis for the excessive force?" **Robertson** replied, "There were witnesses who corroborated Wilson was beaten when he was stopped and apprehended. **Price** also asked, "Since there were no visible signs of injuries, can we really say it was excessive force and was he admitted to the hospital or just stayed overnight in the Emergency Room?" **Robertson** stated, "According to the medical records, he was admitted to the hospital and discharged the following day."
2. **Williams** asked if this was same young man, who was outside, sitting on the ground in his underwear. **Robertson** stated, "Yes while he waited for EMS. According to the officers, Wilson had vomited all over his clothing." **Bartels** stated, "I believe he said in a statement, he was told by the officers to take his pants off because of the vomit."

Following the questions, the **Chair** called for a separate vote on each complaint.

It was moved by **Bartels** to accept the staff recommendation to **sustain** the allegation of Excessive Force against Officers Caldwell, Devoto and Godwin. **Williams** seconded. Hearing no further discussion, the vote was approved.

It was moved by **Price** to **not sustain** the Excessive Force allegation against Officer Jonathan Cornelius who was not present. **Bartels** seconded. Hearing no further discussion, the vote was approved with an abstention from **Williams**.

Regarding the allegation of False Imprisonment, it was moved by **Morris** to accept the recommendation of staff to **sustain** the allegation of False Imprisonment against Officer Cornelius. **R. Johnson** seconded. Hearing no further discussion, the motion was approved.

E. RECOMMENDATION AND VOTE REGARDING DISCIPLINE

Before the discipline recommendation and vote, **Robertson** provided the Board with the category of each discipline as outlined in APD's SOP. Regarding the sustain allegation of Excessive Force against Officers Robert Godwin, Dimitri Caldwell and James Devoto, this is a category 'C' violation with a penalty ranging from four up to fifteen days suspension.

➤ Jonathan Cornelius

Regarding the allegation of false imprisonment against Jonathan Cornelius, this would be considered 'abuse of authority' and falls into a category 'B' offense. The penalty ranges from a written reprimand up to a three day suspension. Officer Cornelius has been on the force since February 2007. According to the records of SOP, he has a total of seven complaints filed against him. Two of them were sustained-oral reprimands for failure to appear in court. Four complaints were not sustained and one is pending, (*Wilson case*). Of the four, three were excessive force and two were not sustained and one is pending.

Discussion/Questions...

1. **Bartels** stated, *"The last time this Board met, we considered a case somewhat similar to Wilson where two young men, we determined, were strip searched. I think this is similarly egregious case. All of these cases where the strip search were involved, were not a matter of simply detaining somebody without legal justification for doing that. I think again, and as I said last month, what occurred here was sexual assault and I feel the same way about this particular case. I understand we can depart from the guidelines, in terms of a recommendation, and what we have here is not just false imprisonment, it's a strip search in public without probable cause and without consent. Even if somebody does consent to be frisked, that is not the same as consenting to a strip search. Not only that, this was all done to a 17 year old kid. Given all of that and the case we discussed last month, I said we should consider termination and I think it is appropriate to consider that here as well."* **Williams** indicated his agreement with **Bartels**.
2. **Price** expressed concern regarding the recommendation to terminate. *"This officer has only had two minor complaints sustained against him, four not sustained and one pending. Seven complaints since his 2007 date of hire. The two complaints sustained were for not appearing in court and the Board has not explained if there was a legitimate reason for not appearing in court."* To clarify, **Bartels** stated, *"I think the failure to appear in court is irrelevant. The reason I made that comment...this was a sexual assault and they were strip searched in public without consent and it was done to a seventeen year old. When I made that comment, the two failures to appear in court didn't factor in."* **Price** asked if the case had already been before the courts. **Bartels** replied, *"The judge granted the suppression motion on the basis that the officers did not have legal cause to detain Mr. Wilson."*
3. **Hubbard** and **C. Johnson** asked for the penalty to be restated. **Robertson** indicated that according to APD SOP this allegation falls under a category B with a penalty ranging from a written reprimand up to a three day suspension.
4. The **Chair** stated that it is true, the Board has the authority to go outside the APD SOP 'grid and make other recommendations; however, we decided some time ago to keep our recommendations in line with the grid. **Bartels**, *"I would also note that there is something else the Board may want to consider and that is the importance in making our recommendations consistent with cases that have a lot of characteristics in common. If I recall correctly, at the last meeting, a majority of the Board voted to make a recommendation regarding two of the officers in the case of Mr. Venegas and Mr. Kidd that was outside the standard grid. Don't quote me, but if I recall correctly, for two of the officers, the majority of the Board voted for a 30-day suspension."* **C. Johnson** stated, *"We need to keep in mind this is just a discussion among the board members so that we will have an idea of the varying opinions because to simply say that we are talking about terminating, and I think Mr. Bartels well knows, and for the record that was not his intention, but we don't want to set some precedent here...saying we are going to terminate here and later on with another case, give an officer three days. I agree we need to try to be as consistent as possible based on some prior issues relative to the officer."*

Following the discussion, the **Chair** entertained a motion regarding the sustained allegation against Officer Cornelius.

It was moved **Bartels** to recommend termination of Officer Cornelius for False Imprisonment. **Williams** seconded. Three members voted in favor and six against. The motion failed.

Another motion was entertained by the **Chair**. Regarding the False Imprisonment allegation against Officer Cornelius, it was moved by **Harrison** to recommend a category B discipline with a three day suspension. **Morris** seconded. The motion was approved with four votes in favor and three Nay Votes from **Bartels**, **Williams** and **Aliniece** and one abstention.

The **Chair** called for a motion regarding the other officers, Dimitri Caldwell, Robert Godwin and James Devoto.

Prior to the motion and vote, **Robertson** reminded the Board that the violation for the officers is a category 'C' ranging from four to fifteen days suspension. The following consist of their individual record and the Board's recommendation for discipline:

- Dimitri Caldwell is no longer employed with APD. He was hired in February 2004 and resigned April 12, 2011 for reason unknown. He had a total of five (5) complaints filed against him. Of the five, two were not sustained and two were sustained (*failure to appear in court and vehicle accident*) and one open case and that being the Wilson investigation.
Special Note: Since Caldwell has resigned, no discipline recommendation will be made or voted on. The sustain vote regarding the allegation is part of the record.
- James Devoto was hired in July 10, 2007. There have been two complaints filed against him. One is the Wilson case which is still pending. The other was an excessive force case filed October 6, 2010 alleging that Officer Devoto and three other officers used excessive force during an arrest made in September 2010. He alleges they pushed him out of a cab and beat him but that allegation was not sustained.

Discussion...

1. **R. Johnson** asked if Officer Devoto was the first officer on the scene. **Robertson** replied No, Officer Godwin was the first officer.
2. Regarding the disciplinary action, **Harrison** asked, "This is a category C with a four (4) to fifteen day suspension. How do we attach a proactive corrective action and can we?" **Robertson** responded, "We can recommend training." **Price** indicated that she would recommend training. "When an officer has been on for four years and has had only two complaints, and neither sustained, I just can't see recommending anything other than training or a written reprimand. Also, I have a problem with this board bringing up a non-sustained allegation against officers. It creates a mindset that an allegation was made and although, it was not sustained there is still a certain amount of weight attached to it. I can say from 25 years of policing, a lot of false allegations are made and I see no need to bring non-sustained allegations up."

Hearing no further discussion, it was moved by **Price** that the Board recommend training for Officer Devoto. **C. Johnson** seconded. Hearing no discussion, and calling for the vote, the motion failed with only two voting in favor of the motion and nine 'Nay Votes'.

The **Chair** entertained another motion.

Williams moved to recommend five days suspension and training. **Bartels** seconded. Hearing no discussion, the motion was approved with one Nay Vote by **Price**.

- Robert Godwin has been employed with APD since November 29, 2005. He has had a total of seven (7) complaints filed against him. Five (5) of the complaints were not sustained. One was sustained and he received an oral reprimand and one complaint is still pending that being the Wilson case. Two complaints involved excessive force. Of the two, one is the Wilson case and the other occurred in March 2011. The complainant alleges that Officer Godwin and three other officers used excessive force during an arrest. The complainant suffered a broken nose, jaw and facial fractures. He also alleges that the officers planted evidence on him.

The *Chair* entertained a motion. It was moved by *Bartels* that the Board recommend five days suspension and training. The motion was seconded by *Morris*. Hearing no discussion, the motion was approved.

CONSIDERATION OF INVESTIGATION #11-37, COMPLAINT OF RALPH ANDREWS, INVESTIGATION BY MARC ADDINGTON (*Agenda Item V*)

A. SUMMARY OF ALLEGATION

Investigator Addington reported that Ralph Andrews filed a complaint, ACRB Complaint #11-37, alleging that he was falsely arrested and subjected to excessive force by members of the US Marshall's Fugitive Task Force which includes members of the Atlanta Police Department. The incident occurred May 23, 2011 at approximately 9:00 a.m. at Andrews' home at 914 Welch Street.

B. THE INVESTIGATION AND WHAT WAS REVEALED

Mr. Andrews alleges that he was at his home when he heard a knock at the door and heard someone shouting, "Police," so he went to the window. As he was looking out the window, the officers kicked in his door and entered the house with their weapons drawn. There were seven (7) or eight (8) officers in plain clothes and wearing vests and hats that said something involving a taskforce. His stepson, Octavious Stallings, was there with him and they were both grabbed and ordered to the ground and handcuffed. One of the officers asked his name and when he replied, the officer said that he is the person they are looking for. Mr. Andrews explained that he had gotten out of jail four days ago and asked them to check the warrant. The officer verified this information and the warrant was clear. Subsequently, Mr. Andrews and his stepson were un-cuffed and released. The officer apologized and Andrews asked for someone to repair the door. The officers gave him an out of state telephone number. He tried to call the number but the person who answered the phone didn't know what he was talking about.

C. INTERVIEWS

It was determined that Officers Munson and Pope were members of the US Marshall Southeast Regional Fugitive Task Force on the day of the incident. Both officers were interviewed regarding this complaint. Officer Munson said that the officers participated in what they call a "round-up." He said they are giving a stack of 30 or 40 arrest warrants. They verified that Mr. Andrews lives at the location and arrived at the door. Officer Munson observed Mr. Andrews look through the curtain and the officers immediately broke through the front door. He said that he received the warrants a week prior to serving the warrants and he typically does a NCIC/GCIC inquiry on the day they plan to serve the warrants. Officer Munson said that when he was informed by Mr. Andrews that he had turned himself in a few days earlier, Munson verified this information. He said that he gave Mr. Andrews the telephone number for the US Marshall's office to file a tort claim to have his door repaired. Officer Munson admitted that he failed to pull the warrant out of the group that the Task Force was going to serve and that it was an oversight on his part.

Investigator Pope explained that he was involved with this roundup and when informed by Mr. Andrews that he had turned himself in on the warrant, Officer Munson verified Mr. Andrews' claim. Mr. Andrews was provided with information to assist him to file a claim for the damage to the door.

Octavious Stallings' complaint was not considered because he would not cooperate and did not file a signed complaint. Mr. Stallings also failed to return numerous calls to be interviewed regarding this matter and to support the allegations of his step-father.

D. STAFF RECOMMENDATION REGARDING COMPLAINT #11-37

Task Force members are required to comply with APD standard operating procedures. Georgia Law allows law enforcement officers to forcibly enter residences where they believe an offender is concealed. The officers mistakenly, but genuinely, believed that Mr. Andrews had an active arrest warrant. While this admission is refreshingly candid, it cannot be used to avoid the responsibility of checking on the validity of

the arrest warrant before entering the house. For this reason, the ACRB staff recommends the allegation of False Imprisonment be **sustained** against Officers Munson and Pope.

The SOP governing force and the pointing of firearms prohibits the unnecessary or unreasonable use of force. Investigator Pope entered the front door with a firearm. This was unreasonable and the staff recommends a finding of **sustained** be assigned to the allegation of Excessive Force against Officer Pope.

Officer Munson was not part of the entry team, so the staff recommends a finding of **Not sustained** against Officer Munson with regard to the Excessive Force complaint.

C. VOTE BY THE BOARD TO ACCEPT RECOMMENDATION

Following the summary, the **Chair** opened the floor for discussion and questions.

Discussion...

1. **Price** asked **Addington** if it was true that Officer Munson is an Atlanta Police officer assigned to the US Marshall Fugitive Task Force and for how long. **Addington** said that both Munson and Pope were assigned. Also, he added that Munson has been on the force for almost thirty years.
2. **Bartels** asked if Mr. Andrews was wanted on state or federal charges. **Addington** stated it was a battery charge. He also indicated that Munson said normally the task force is used to apprehend dangerous felons but frequently that are tasked with doing local round-ups throughout the metro area. "In all fairness to Munson, he did indicate that he was not pleased with that situation, because it is very likely that individuals on these minor misdemeanors may have already been turned in or apprehended. He is sensitive about entering a residence where the individual may have already turned himself in." **Bartels**, "Obviously someone is expected to run checks between the time the warrant is written and the time they actually apprehend them; was Officer Munson specifically charged with that responsibility or was it a shared responsibility among everybody? I asked this because we also sustained the allegation against Officer Pope. **Addington** said the responsibility falls on all the officers and there is no specific SOP that address if they should check the warrant before they served it. I believe it was just common sense and understood. This was going to be a recommendation of the staff that they develop a policy where there is a process whereby they have to check the warrant before serving it to avoid any confusion like this. Collectively, Pope was at the location and participated in the detention of Mr. Andrews and that is why the allegation was sustained against him as well.
3. **Williams** said, "Given all the time that Officer Munson has served as a professional on the force—30 years, it would seem he would know when a person's civil rights are being violated." **Addington** stated that Officer Munson was refreshingly candid and admitted that he made a mistake. "To say that he should have caught the mistake because he was on the force for 30 years, I can't answer that."
4. **Price** asked the age of the arrest warrant. **Addington** replied it was less than four months.

Following the discussion, the Chair entertained a motion to accept staff recommendation.

1st Allegation of False Imprisonment against Officer Munson

- It was moved by **Williams** to accept the staff's recommendation to **sustain** the allegation. **Bartels** seconded the motion. No further discussion, the motion was approved with **Price** abstaining. For the record Officers Munson and Pope have both worked for Ms. Price during tenure with APD.

2nd Allegation of False Imprisonment against Officer Pope

- It was moved by **Williams** to accept the staff's recommendation to **sustain** the allegation. **Bartels** seconded the motion. No further discussion, the motion was approved with **Price** abstaining.

3rd Allegation of Excessive Force against Officer Munson

- It was moved by **Bartels** to accept the staff's recommendation to **not sustain** the allegation. **Williams** seconded the motion. No further discussion, the motion was approved with **Price** abstaining.

4th Allegation of Excessive Force against Officer Pope

- It was moved by **Bartels** to accept the staff's recommendation to **sustain** the allegation. **Williams** seconded the motion. No further discussion, the motion was approved with **Price** abstaining.

D. THE BOARD DECIDES DISCIPLINE

1. Officer Munson (False Imprisonment):

Addington reported that Officer Munson has been with the Police Department for almost 30 years. During the last five years, he has had four disciplinary complaints...two sustained motor vehicle accidents and one for conduct which was not sustained. One case is currently open which the case that we are reviewing tonight is. The discipline is a category D, Abuse of Authority, ranging from a written reprimand up to a two or three day suspension with a proactive training component.

It was moved by **R. Johnson** for the Board to recommend an oral admonishment for Officer Munson. **C. Johnson** seconded the motion.

Discussion...

- a. **Williams** expressed concern that the recommendation was too light. "This officer has been on the force for 30 years, and all we are recommending is oral admonishment?"
- b. **Harrison** said, "In all our discussion, I think we have forgotten the fact there was a child involved and traumatized. **Addington** stated that he was seventeen and he did not cooperate with the investigation. **Harrison** asked if he would be offered counseling since he had witness this event. **Addington** said, "He did not know." **Harrison** stated, "I understand the laws in the state of Georgia, being seventeen and considered an adult, does not take away from the fact that he may be traumatized."
- c. **Bartels** asked, "When the officers entered the house, were the weapons pointed at anyone?" **Addington** answered, No, the guns were pointed down. **C. Johnson** said, "The officers admitted they made a mistake and also it was brought out that the son did not cooperate with the investigation. Now it could be that he was so traumatized and that is why he didn't cooperate. We can only assume; however, people do make mistakes and the officers appear to be remorseful. At best, an oral admonishment is appropriate and at worst, a written reprimand." **Williams** expressed concern. He said, "These types of incidents occur all the time in the presence of young black men and whether you know it or not, they suffer the rest of their lives. In the report, it was stated that the officers broke through the door with their guns drawn pointing. Also, the officers gave Mr. Andrews a telephone number for him to call to get his door fixed. Mr. Anderson indicated that he and his wife called the number but the person who answered the phone stated they had no idea what he was talking about. This young man could be traumatized for the rest of his life and you want to give him an oral admonishment because finally, we have an officer who said I made a mistake? And Mr. **Johnson** being a young black man." The **Chair** then took a moment to warn **Williams**, "That is just not right. You cannot call somebody on the Board out like that. That's wrong." **Williams** said, "Don't get me started." The **Chair** said, "We need to have some decorum and this is a good time to start right now." **Williams** replied, "Yesum Missy." The **Chair** stated to **Williams**, "You are out of order."

Following the discussion, the **Chair** called for the vote. The vote was split with four supporting the motion and four against the motion. **Price** abstained. Due to the split, the **Chair** voted to break the tie in favor of the motion. The motion was then approved.

Another motion was made with regards to Officer Munson. It was moved by **Harrison** to add training to the previous motion and he asked the Board to include in the recommendation for APD to develop procedural guidelines and training for officers serving warrants and checking to see if it is still valid, as well as, who's responsibility it is to check the validity of the warrant. The motion was seconded by **Williams**. Hearing no discussion, the motion was approved.

2. Officer Pope (False Imprisonment Allegation):

Addington reminded the Board that the discipline is a category 'B' violation carrying a written reprimand up to a two to three day suspension and also a component of training. Pope has been employed since 1996. In the past five years, he has had two disciplinary complaints filed against him. One complaint was for failure to take appropriate action and it was not sustained; and the current open investigation regarding Mr. Andrews.

It was moved by **Harrison** to recommend the officer receive a verbal admonishment with training. It was seconded by **R. Johnson**. Hearing no further discussion, the **Chair** called for the vote. The motion was approved.

3. Officers Munson and Pope (Excessive Force Allegation)

Addington reported that this is a category 'C' violation and the range of discipline is from four to fifteen day suspension to demotion with a pro-active training component, psychological intervention or a substance abuse program if applicable. It was also noted by staff, that at the time of entering the home, the officer believed the warrant was valid.

Discussion / Questions...

- a. **Aliniece** asked, "If the warrant was for battery, why did they go in with such force?" **Addington** stated, "There is a Georgia law that allows them to enter with force if they believe a wanted person is inside. But having said that, the officers would certainly be aware of the charge."
- b. **R. Johnson** asked if the officers received the entire criminal history of the person being served a warrant. **Addington** replied, yes. **R. Johnson** also asked. "Did the officers know of anything that may have been problematic and causing them concern regarding this individual?" **Addington** answered, no. **Williams** then asked if there were any officers considered to be bystanders. **Addington** answered, "There were only two APD officers present."

Following the discussion, it was moved by **Williams** that the officers received a fifteen day suspension with training. Hearing no second, the motion dies.

Based on the information provided by the staff, **Harrison** motioned for the Board to reduce the allegation from a category 'C' to a category 'B' and recommend a written reprimand with training. **Hubbard** seconded the motion. No discussion, the motion was approved with a vote of four in favor and three Nay Votes from **Bartels, Williams and Aliniece**. **Price** and **R. Johnson** abstained.

CONSIDERATION OF COMPLAINT #11-27, COMPLAINT OF RODNEY DANIEL – INVESTIGATION BY SHEENA ROBERTSON (Agenda Item VI):

A. ALLEGATION

Investigator Robertson provided an overview of the complaint #11-27. She indicated that the complainant, Mr. Rodney Daniel, is a 22 year old African American male. He, along with his mother, Frieda Johnson filed an Excessive Force complaint with the ACRB alleging that on April 25, 2011, Mr. Daniel was beaten by APD officers during an arrest.

B. RODNEY DANIEL'S INTERVIEW

Mr. Daniel stated that on April 25, 2011, at approximately 12:00 p.m., he was at the Forest Cove Apartments standing in the middle of the complex with several other men when an unidentified Atlanta Police Officers approached them. The officer had his weapon drawn and pointed at one of the men and ordered him to the ground. Mr. Daniel said the men ran from the area and he walked behind the building and proceeded through the field to the other side of the complex.

Mr. Daniels said, approximately five to ten minutes later, an Atlanta Police Officer, later identified as Lyle Moore, approached him from behind with his weapon drawn and pointed at him and said words to the effect of, "It's me and you in this field. I'll shoot you." The officer then ordered him to the ground. Mr. Daniel said he turned around and begin to walk toward Officer Moore and as he did so, Officer Moore sprayed mace on the right side of his face. He said he then ran and Officer Moore chased after him. At one point during the chase, Daniels said he ran into two different apartments and it was in the second apartment that he was apprehended. He said that when he entered that apartment, he was very tired and was having difficulty breathing so he held both arms up and told Officer Moore that he gave up. He said Officer Moore ran into

the apartment and struck him in his head several times with handcuffs. He said he again repeated that he gave up, but Moore struck him several more times in the face with his closed fist and the handcuffs. At that time, he said another officer arrived, later identified as Richard Ramirez, and placed his arm around his neck and began to choke him while Officer Moore continued to strike him. He said he could not breathe and began to fall to the floor. He said as he was falling to the floor, Moore struck him one last time in the face. He said while on the floor, he repeatedly told the officers that he could not breathe and that he suffers from asthma. He said the officers then pinned his face to the floor, handcuffed him from the front and told him to stand up. He said he was unable to stand because he could not breathe, so the officers dragged him out of the apartment and sat him on the sidewalk. Mr. Daniel said that while he was sitting on the sidewalk, a third officer arrived. He said he was still having difficulty breathing and it was particularly, becoming harder to sit up so that officer went behind him and held him up. He indicated that officer never struck him. He said during that time, one of the residents brought some water to one of the officers and that officer poured it over his head. They then picked him up, took him to the parking lot and sat him on the ground. They eventually, put him in the patrol car and drove him to the Mrs. Winters Restaurant located on McDonough Blvd. to meet the ambulance. He said that when they arrived at the location, he ran out of the patrol car to the ambulance where he was treated. He was then sent back to the patrol car and taken to the precinct where he remained for approximately two hours before being taken to Grady Hospital for further treatment. Mr. Daniels said he sustained several lacerations and cuts to his face as a result of the beating.

During the interview with the ACRB, Mr. Daniel admitted to running from the officers; however, he denies that he resisted and/or struck any of the officers anytime during that encounter.

C. OFFICERS INVOLVED

The ACRB's investigation identified the officers involved in Mr. Daniel's arrest as Officers Lyle Moore, Richard Ramirez, Nicholas Mercado and Anthony Dawson.

D. PHOTOGRAPHS / MEDICAL RECORDS / COURT RECORDS

When the complainant's mother initially filed the complaint, she provided video footage that was about 30 seconds long showing Mr. Daniel sitting on the sidewalk with his hands cuffed and there were four APD officers present. One officer was holding Mr. Daniel's hand and another officer appeared to be holding him up. The other two officers were standing nearby. It appears Daniel's face was covered in blood. Verbal comments can be heard in the background which sounds like they are coming from persons who have gathered on the scene. Also, the footage showed one officer receiving water and a towel and he poured the water over Mr. Daniel's head.

From the video footage, ACRB staff extracted still photographs and showed one of the photographs to Mr. Daniel to identify the officer who physically attacked him. Mr. Daniel pointed to the officers who assaulted him. Those officers are identified by ACRB as Richard Ramirez and Lyle Moore.

The ACRB staff obtained a copy of Mr. Daniel's medical records. A review of the records indicate that on the day of the incident, Daniels was seen in hospital Emergency Room and he reported to the staff that he had been struck with handcuffs multiple times in the head. He was admitted to the hospital and treated for a one (1) cm laceration on the left side of his face, as well as, a 1 cm laceration on his left ear. Steri-strips were used to close the wounds. The records also indicate that Mr. Daniels had multiple abrasions on his forehead and a small laceration on the top of his head. Mr. Daniel was discharged the following day and transported to the Fulton County Jail.

The Fulton County Superior Court records revealed that Mr. Daniel was arrested April 25, 2011 and charged with the following: Robbery by Force and Obstruction of Law Enforcement Officer. Mr. Daniel's criminal case is still pending.

E. WITNESS INTERVIEWS AND OFFICER INTERVIEWS

During the course of the investigation, interviews were conducted with various residents of the apartment complex and they corroborated Mr. Daniel's claim and stated they observed the officers beating him.

Interviews were conducted with all of the officers involved. During their interviews with the ACRB, Officers Moore and Ramirez both admit to using physical force to restrain Mr. Daniel but contend that the use of force was justified because Daniel was resisting arrest.

Officer Moore stated he could not recall with certainty how many times he struck Mr. Daniel but stated that it was possible that he struck him multiple times. Officer Ramirez stated that he struck Mr. Daniel at least twice and admits that he “accidentally” had him in a choke hold position for a few seconds.

Officers Mercado and Dawson were present during the incident and they both stated that they assisted the officers in getting Daniel into custody by getting the handcuffs on him; however, they stated they did not strike Daniel nor did they observe Officers Moore or Ramirez strike him. It is noted that Mr. Daniel stated that Officers Moore and Ramirez were the only officers that struck him.

F. ACRB STAFF RECOMMENDATION

Based on these facts, the staff recommends the following:

- The allegation of ‘Excessive Force’ as alleged by Rodney Daniels against Officers Lyle Moore and Richard Ramirez assigned a finding of “**sustained.**”
- The allegation of ‘Excessive Force’ against Officers Nicholas Mercado and Anthony Dawson is assigned a finding of “**not sustained.**”

G. BOARD VOTE REGARDING STAFF RECOMMENDATION

Following the summary and recommendation of the staff, the **Chair** opened the floor for discussion and questions.

Questions /Discussion...

1. **Price** asked, “Why the officers were dispatched to the area and was there a lookout given by a plain clothes officer that there were two robbery suspects that had been identified in that general area?” **Robertson** replied yes. **Price** then asked, “Is it also correct that the ambulance did not come into that location because of the hostility they knew existed in that area?” **Robertson** replied yes. **Price**, “Is it also clear that all persons involved except one officer, received injuries and were treated at Grady Hospital?” **Robertson** replied yes. **Price** then asked **Robertson** to explain why the officer poured water on Daniel’s head. **Robertson** stated that they said it was to get the OC spray out of Daniel’s face. **Price** said, “Is that not the procedure the Atlanta police requires when a person has been sprayed as a way of administering aid to that person to help with the burning of the eyes?” **Robertson** stated that she could not answer that question.
2. **Williams** asked, “Initially, were there more than one individual the police were concerned with?” **Robertson** stated, “According to Mr. Daniel, he couldn’t recall whether or not he was there with two or three other men. When the first officer approached, he approached one of the other men.” **Williams** then asked, “Is it also true that Mr. Daniel’s face was covered in blood and they may have poured water over his head to get the blood off?” **Robertson** responded, “Yes, but the officers said they did it to remove the OC spray.”
3. To clarify an earlier statement, **Harrison** said, “I thought it was the victim of an alleged robbery who had identified the suspects in the parking lot, not a plain clothes policeman or an informant.” **Robertson**, “Yes it was the victim who called. He had been robbed a couple of weeks prior and he called the detective who was working on his case and told him that individuals suspected of robbery were in the parking lot.”
4. **Bartels**, “The Atlanta Police Department do not carry tasers, is that correct?” **Beamud** said that the only people who use tasers are assigned to specialty units like the swat team, not patrol.
5. **Morris** asked, “Is it standard operating procedure to use handcuffs as a weapon.” **Robertson** replied no. **Morris** recalled that the board reviewed another case where the officer used his handcuffs or flashlight as a weapon. “What does the policy manual say regarding the use of handcuffs as a weapon?” **Beamud** stated that she didn’t recall a specific policy but cuffs are metal objects.
6. **Williams** said, “The victim (Daniel) said he was beaten repeatedly with the cuffs, is that right and followed by beating him with their fists?” **Robertson** said yes.

The **Chair** entertained a motion to accept staff’s recommendation. Each officer will be voted on individually.

➤ Officer Lyle Moore

It was moved by **Bartels** to accept the staff recommendation to sustain the allegation of Excessive Force against Officer Moore. The motion was seconded by **Williams**. No further discussion, the motion was approved with one Nay Vote from **Price**.

➤ Officer Richard Ramirez

It was moved by **Williams** to accept the staff recommendation to **sustain** the allegation of Excessive Force against Officer Ramirez. The motion was seconded by **Bartels**. No further discussion, the motion was approved with one Nay Vote from **Price**.

➤ Officers Nicholas Mercado and Anthony Dawson

It was moved by **Morris** to accept the staff recommendation to **not sustain** the allegation of Excessive Force against Officers Nicholas Mercado and Anthony Dawson. The motion was seconded by **Bartels**. No further discussion, the motion was approved.

H. BOARD VOTE REGARDING DISCIPLINE

The **Chair** opened the floor for discussion and questions before the vote. **Robertson** provided information on the type of violation and each officer's background.

She indicated that according to the APD grid, this is a category 'C' violation with discipline ranging from four to fifteen days suspension.

Regarding their individual records:

- Officer Moore has been employed with APD since October 17, 2006. Since his date hire, five complaints have been filed against him. Of those complaints, three resulted in a finding of sustained; one exonerated and one is still pending investigation.
- Officer Ramirez has been employed since January 9, 2007 and four complaints have been filed against him since his employment. Of those complaints, one resulted in a finding of sustained, one exonerated and two are still pending investigation (*Daniel case and a vehicle accident*).

Discussion / Questions ...

1. **Harrison** asked **Robertson** to explain what Officer Ramirez meant when he said he 'accidentally put a choke hold on Daniel. **Robertson** said, "The officer said he was very oily from the OC spray and also sweating and when he tried to grab him, his arm slipped in that position for a few seconds." **Harrison**, "But it was an accident." **Robertson** said, "That's what he said."
2. **Williams** stated, "Could it be that although Daniel was running and so were the others, and they got him for running and looting but he may not have been the person they were coming to get." **Robertson** said, "That matter is still pending and the other alleged suspect was apprehended and arrested. Both cases are still pending." **Williams**, "Were the other individuals beat down too or were they the only two? I thought there was a group of men." **Robertson** indicated that Daniels was in the parking lot with a group of guys when the officers came up. The officers were looking for two men, Daniels and the other suspect. Both men were arrested and charged, but the case is pending.
3. **Price** asked about Daniel's size. "He looks like a big muscular built guy. How big were the officers, and did it take two officers to bring him down?" **Robertson**, "There are photographs of the officer in the full report."
4. **R. Johnson** asked if the officers received their injuries during the foot chase. **Robertson** replied that it was during the struggle in the apartment.

The **Chair** entertained a motion on each officer:

It was moved by **Bartels** to recommend Officer Moore receive a five day suspension. The motion was seconded by **Morris**. After some discussion, the motion was approved with two Nay Votes from **Price** and **Harrison**.

It was moved by **Bartels** to recommend Officer Ramirez receive a five day suspension. The motion was seconded by **Morris**. After some discussion, the motion was approved with two Nay Votes from **Price** and **Harrison** and one abstention from **Williams**.

REQUEST FOR SUBPOENA FOR INVESTIGATION OF RENEE BAILEY'S COMPLAINT #11-70, (Agenda Item VII)

Beamud summarized the purpose of the subpoena. She reported that on October 3, 2011, ACRB received a signed complaint form from Renee Bailey alleging False Imprisonment by an APD officer. Ms. Bailey alleges the incident occurred involved a dispute over a tip amount at the "Bliss Spa" located in the W Hotel, 45 Ivan Allen Jr. Blvd. in downtown Atlanta. The complainant was allegedly handcuffed and threatened with jail by the APD officer if she did not pay the tip that was being disputed.

The ACRB staff respectfully requests the Board to issue a subpoena for the production of evidence related to any surveillance video footage that may have recorded the incident.

The staff also requests the Board to issue a subpoena to appear for Trevor Collins, an employee of the Bliss Spa who was a party in the dispute with the complainant.

The **Chair** called for motion to grant both subpoenas.

It was moved by **Morris** to grant both subpoenas. **Williams** seconded the motion. Hearing no discussion, the motion was approved.

INTAKE REPORT FOR AUGUST, 2011 (Agenda Item VIII)

A copy of the Intake Report was included in the Board packets. A total of fifteen (15) complaints were received for the month of September, 2011. Staff recommended investigating four (4) of the complaints and eleven (11) complaints were dismissed. The following is a list of those complaints and recommendations by the staff:

- **#11-54 / Jan Calhoun** alleging False Arrest
Staff recommends dismissal because this is not within the board's jurisdiction. Arrest was in Cobb and the warrant was from Douglas County.
- **#11-55 / Allen King** alleging Unlawful Imprisonment
Staff recommends dismissal because this is not within the board's jurisdiction.
- **#11-56 / Laura Bailey** alleging False Arrest
Staff recommends dismissal for failure to file a signed complaint.
- **#11-57 / Cavonna Assigbley** alleging Poor Service
Staff recommends dismissal because the matter is not within the ACRB's jurisdiction.
- **#11-58 / Faye Fawley** alleging False Arrest
Staff recommends dismissal because the complaint was outside the 180 day requirement as outlined in the City Ordinance.
- **#11-59 / Akilah Williamson** alleging False Arrest
Staff recommends investigation into the allegation of False Arrest.
- **#11-60 / Brandon Groves** alleging Unknown
Staff recommends dismissal because he has not appeared or filed a signed complaint.
- **#11-61 / Anatasia Paggett** alleging False Arrest
Staff recommends dismissal because for lack of signed complaint.
- **#11-62 / Jeffrey Phillips** alleging Abusive Language
Staff recommends investigation as a complaint of abusive language and false imprisonment.
- **#11-63 / Cedric Barnhart** alleging Excessive Force
Staff recommends investigation into excessive force against members of the Department of Corrections.
- **#11-64 / Kenneth Cobb** alleging False Arrest

- Staff recommends dismissal because the complaint is beyond the limitation period of 180 days.
- **#11-65 / Kenneth Cobb** alleging False Arrest
Staff recommends investigation into the allegation of false arrest.
 - **#11-66 / Sabrina Felton** alleging Perjury
Staff does not recommend investigation because this is not within the Board's jurisdiction (perjury).
 - **#11-67 / Cedric Smith** alleging Excessive Force
Staff recommends dismissal because the allegation does not involve the APD.
 - **#11-68 / Complainant** alleging False Arrest
Staff recommends dismissal because she was arrested by members of APD based on a warrant.

The *Chair* entertained a motion to accept the *Director's* Intake report and recommendations. It was moved by *Morris* to accept the *Director's* report. The motion was seconded by *Bartels*. The *Chair* called for a discussion. Hearing none, the motion was approved with one abstention vote by *R. Johnson*.

PUBLIC COMMENTS (*Agenda item IX*):

Chair Morrissey opened the floor for public comments. Two (2) people addressed the board.

➤ First Speaker: Frieda Daniel Johnson

Ms. Daniel Johnson expressed concern regarding comments made by a member of the Board. She said she did not expect to hear or witness members having a lack of sensitivity and disregard for her son. She indicated that her son was seriously injured and the beating he received from the police was not necessary because he threw his hands up and gave up but they continued to hit him in the face and head.

➤ Second Speaker: Tiffany Roberts

Ms. Roberts also addressed the Board to present additional information regarding Rodney Daniel's complaint #11-27. She expressed concern regarding the discipline recommendation.

Additional Comments from the Board:

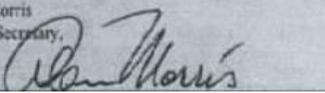
Williams reported on the NACOLE conference that occurred September 11th through September 15th in New Orleans. He stated that he enjoyed the conference and found it very beneficial. The *Chair* thanked *Williams*, for attending and representing the Board at the conference.

ADJOURNMENT

Chair Morrissey entertained a motion to adjourn. *R. Johnson* moved to adjourn the meeting. The meeting adjourned at 9:10 p.m.

Approved as to form and content,

Alan Morris
Board Secretary



Signature

Date: 11/10/11