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February 11, 2011

Chief George Turner
Atlanta Police Department
226 Peachtree Street, S.W.
Atlanta, Georgia 30303

RE: Complaint #10-43 / Marlon Kautz

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Post 3-At-Large

Dear Chief Turner:

The Atlanta Citizen Review Board (“ACRB”) completed its investigation and adjudication of the complaint that was filed by Mr. Marlon Kautz alleging that Officer Anthony Kirkman used excessive force when he forcibly removed his cell phone camera from him on April 22, 2010.

Mr. Kautz filed a complaint with the ACRB alleging that Officer Anthony Kirkman used excessive force when he forcibly removed his cell phone camera from him on April 22, 2010. Mr. Kautz is a member of COPWATCH and was in the area of Euclid Avenue when they observed police activity at a store located at 1150 Euclid Avenue. He began to film the incident and APD Officer Kirkman ordered him to stop filming because he was working undercover. Mr. Kautz ignored Officer Kirkman’s request and continued to film. Officer Kirkman grabbed the phone and pushed it down. He resumed filming when the officer let go and Officer Kirkman became upset and tried to grab the phone from him. Mr. Kautz asked him to “please let go of the camera.” Two other police officers assisted Officer Kirkman to secure the phone. Mr. Kautz said the officers turned him around as Officer Kirkman twisted his arm behind his back and wrenched the phone from his hands. Mr. Kautz was not charged with any crime and further said that he eventually retrieved his cell phone from the property room and the video footage was corrupted and not viewable.

Adele Maclean was a witness and was interviewed for the purpose of this investigation. She confirmed Mr. Kirkman’s version of the incident.

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Officer Kirkman said that members of the narcotics unit were serving an arrest warrant at Cloud 9 on Euclid Avenue and he saw Marlon Kautz taking photographs. He said he asked Mr. Kautz to stop taking pictures two times. He also said that he told Kautz that he could take pictures of them from their waist down. Officer Kirkman said that he didn't want Kautz to take pictures of them because they were going to use the arrestee as a cooperating defendant to initiate other narcotic cases and was concerned for the arrestee's safety. He feared that if Mr. Kautz published the video on the internet it would jeopardize the safety of the arrestee. He acknowledged that he removed the phone from Mr. Kautz but did not remember the manner in which this was accomplished.

Officer Mark Taylor said that he was with other members of the Narcotics Unit serving a warrant at Cloud 9 and he and Officer Kirkman were escorting the arrestee to their patrol car. He said he heard Officer Kirkman ask Mr. Kautz not to film them since they were undercover. He said Kautz ignored Officer Kirkman's request and instead moved closer to Kirkman and continued to take pictures of them. He said that he placed the arrestee into their car and Kirkman secured the phone. He did not witness what occurred or how Officer Kirkman took the phone.

Sergeant Zygaj described how he and officers from the Narcotics Unit were arresting an individual for the sale of narcotics inside the Cloud 9 smoke shop. The arrestee indicated that he wanted to cooperate in subsequent narcotics investigations. When they noticed Mr. Kautz taking pictures of them and the arrestee, Sergeant Zygaj advised Kautz that he could take pictures but not to take photos of the arrestee because it could jeopardize his safety. He escorted the arrestee to their car and he believes that Officer Kirkman asked Kautz for the phone and Kautz voluntarily surrendered it. He says he did not witness the transfer of the cell phone from Kautz.

The complainant alleges that Officer Anthony Kirkman used excessive force when he forcibly removed his phone. Excessive force is defined as the use of greater physical force than reasonably necessary to repel an attacker or terminate resistance. Officer Kirkman acknowledges removing the phone from Mr. Kautz but could not remember removing the phone from his hand and could not recall using any force or twisting Kautz's arm behind his back. The other two officers claim to have not witnessed the physical exchange.

The case law is well established that citizens may photograph police activity that occurs in public. The concern for the arrestee's safety does not warrant or justify the use of any force. Therefore, the ACRB staff recommends that the allegation be **sustained**.

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The Board further considered a recommendation for discipline. They applied the disciplinary guidelines that are outlined in Standard Operating Procedure 2020. Excessive Force Allegations are classified as a Class C offense. The guidelines provide a range of four (4) to fifteen (15) days of suspension for a first offense. Officer Kirkman has no sustained complaints within the reckoning period, which is five years. Thus, the Board voted to recommend a **four day suspension without pay**. They further recommend that the policy concerning this type of photography be addressed clearly for all officers and that training be provided as soon as possible. The Board was also troubled by the lack of memory professed by Officer Kirkman. This has been an on-going issue and the Board has concerns about the veracity of these assertions made by officers.

Please let me know if you have any questions or would like to have a copy of the full investigation. The ordinance requires the Chief to respond in writing regarding which recommendations are accepted, rejected, or will be implemented with modifications within thirty (30) days of the submission of a recommendation for action by the Board to the Chief.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joy Morrissey".

Joy Morrissey
Board Chair

cc: Mayor Kasim Reed
Council President Ceasar Mitchell
Members of Council
ACRB Board Members