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May 16, 2012

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

RE: Complaint of Noah Killingsworth,  
Case No. 11-78

Dear Chief Turner:

The Atlanta Citizen Review Board (“ACRB”) completed its investigation and adjudication of the complaint filed by Noah Killingsworth alleging false arrest against Officer David Sutton.

Mr. Killingsworth alleges that on August 28, 2011, at approximately 10:00 p.m., he and some of his friends parked their vehicles in a parking lot located at 1260 Glenwood Avenue and went to the Graveyard Tavern; a nightclub, located on the opposite side of the lot. Mr. Killingsworth said that when they arrived at the club and found out that they had to pay an entry fee, they left. He said when they returned to the parking lot, they discovered that their vehicles had been booted. He said one of his friends (whom he would not identify) called 911 and complained about the booting company and shortly, thereafter, approximately four APD officers arrived. Mr. Killingsworth said they tried to explain to the officers why they should not have to pay to get the boots removed, however, he said the officers disagreed. He said this back and forth exchange between them lasted approximately 20-30 minutes. Mr. Killingsworth said at some point, one of the officers, later identified as Officer David Sutton, asked him if he was going to leave the parking lot; he replied, “Yes, I guess I’ll walk my ass home.” At that point, he said Officer Sutton ordered him to turn around and place his hands behind his back. He was then arrested for disorderly conduct.

*Continue...*

Mr. Killingsworth said at no other time during his conversation with any of the officers was he told to leave the lot. He further stated that at no time did he threaten or act violently towards the parking enforcement officer. Mr. Killingsworth did state that one of his friends, whom he did not identify, spoke to the parking enforcement officer in a disrespectful manner. He did acknowledge that it was a pay parking lot, but, at the time he did not see the pay sign that was posted because it was dark and not in plain view. Mr. Killingsworth further acknowledged that he had been drinking; however, he did not consider himself to be drunk. Mr. Killingsworth stated that his criminal case was ultimately dismissed because none of the parties, including Officer Sutton, appeared in court.

At the interview, Mr. Killingsworth provided names and contact information of two individuals who allegedly witnessed the incident; Japhia Maynard and Erica Dumas. Investigator Sheena Robertson's numerous attempts to contact and/or interview these individuals were unsuccessful.

Investigator Robertson obtained and reviewed the 911 telephone call, Zone 6 police radio transmissions and the Computer Aided Dispatch ("CAD") Report made on August 28, 2011, as it relates to this incident. The 911 call reflect that John Page, the Parking Enforcement Officer, called 911 and reported that he was at 1260 Glenwood Avenue and a black male threatened to shoot him if he did not remove the boot. The 911 Operator told Mr. Page that she would send someone to the location. The Zone 6 police radio transmissions and the CAD Report reflect that Officer Sutton was dispatched to the location as a result of the 911 call. Additionally, the CAD Report and APD records show that Sergeant Mark Benson, Officer Jamir Denson, and Officer Shawn Clark also responded to the scene.

As the investigation continued, Investigator Robertson contacted and an interview was conducted with John Page. Mr. Page stated that on the day of the incident, he observed Mr. Killingsworth, along with several of his friends, park their vehicles in a pay for parking lot located at 1260 Glenwood Avenue and exit the lot without paying. Mr. Page said after they left, he proceeded to place boots on their vehicles. He said he was still in the parking lot when they returned and Mr. Killingsworth, whom he described as being drunk, along with his friends, began threatening him and calling him foul names. He said at some point, he called 911 and when the police arrived, he explained to the officers what had transpired and then went across the street while the officers handled the situation. He said the officers were on the scene for approximately one hour trying to get Mr. Killingsworth and his friends to either pay the fee to get the boots removed or leave the property. He said at some point, he overheard one of the officers tell Mr. Killingsworth several times to leave the lot but he refused. He said eventually Mr. Killingsworth was arrested and taken to jail.

According to the Atlanta Municipal Court's records, Mr. Killingsworth was arrested on August 28, 2011 and charged with violation of Atlanta City Code Section 106-81(1), Disorderly Conduct. The records further indicate that the charge was dismissed October 25, 2011 because



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the witness failed to appear in court. During the course of investigation, Investigator Robertson contacted APD to ascertain if the department had any record of Officer Sutton receiving notification from Court to appear in this matter. Officer LaShandria Williamson, Court Liaison Officer, responded and advised that the department did not have any records of having received notification from the Atlanta Municipal Court requesting Officer Sutton's appearance in this matter. Also, during Mr. Page's interview, he indicated that he did not appear in court on this matter because he did not want to waste anymore of his time.

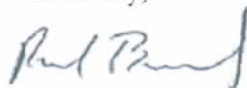
Interviews were conducted with all of the officers that responded to the scene, including the subject officer; Sergeant Mark Benson, Officers Jamir Denson, Shawn Clark and Officer Sutton. All of the officers described Mr. Killingsworth as being very irate, using a lot of profanity and appeared to be extremely intoxicated.

Officer Sutton said he repeatedly tried to get Mr. Killingsworth to pay the \$75 fee to get the boot removed or leave the parking lot without success. He said Mr. Killingsworth became irate and began using profanity. He said at some point, Mr. Killingsworth said to him, "I would be wrong if I just go and punch him in the face" referring to the parking enforcement officer, Mr. Page. At that point, he said he made the decision to arrest him.

An arrest is a seizure under the United States Constitution and when made without probable cause is a violation of the Fourth Amendment (Graham v. Conner, 490 U.S. 1989). In this case, the evidence seems to indicate that Officer Sutton had probable cause to arrest Mr. Killingsworth. Therefore, the Board voted to recommend a finding of **Exonerated** applied to the allegation of false arrest against Officer Sutton.

Please let me know if you will need any further information or would like a copy of the investigation. The ordinance requires that the Chief 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. See Sec. 2-2211(O) of the Ordinance 07-0-0141.

Sincerely,



Paul Bartels,  
Board Chair

PB/shr/mms

cc: Mayor Kasim Reed  
Council President Caesar Mitchell  
Members of Atlanta City Council  
ACRB Members