ATLANTA CITIZEN REVIEW BOARD

MINUTES OF THE LAST MEETING
55 TRINITY AVENUE, S.W., COMMITTEE ROOM TWO, ATLANTA, GEORGIA 30303
September 8, 2011, 6:30 P.M.

ROLL CALL

MEMBERS PRESENT
PAMALA ALINIECE (Aliniece)
PAUL BARTELS (Bartels)
BARBARA HUBBARD (Hubbard)
CHARIS JOHNSON (C. Johnson)
RYAN JOHNSON (R. Johnson)
ALAN MORRIS (Morris)
JOY MORRISSEY (Chair/Morrissey)
MACEO WILLIAMS (Williams)

NEW MEMBERS PRESENT
WILLIAM HARRISON (Harrison)
RUTH PRICE (Price)
(These members have no voting rights until they have been sworn in by the Municipal Clerk)

Vacant Appointments to the Board
Office of the Mayor (vacant 2 months)

STAFF ATTENDEES
MARC ADDINGTON, Investigator (Addington); CRISTINA BEAMUD, Executive Director (Director/Beamud); SHEENA ROBERTSON, Investigator (Robertson); WILLIAM CASTING (Casting) City Law Department, Assigned Board Attorney.

AGENDA

MEETING CALLED TO ORDER:
The meeting was called to order at 6:35 p.m. The Chair welcomed everyone including members of the Atlanta Police Department, Office of Professional Standards: Major Elder Dancy and Lieutenant Neil Klotzer.

APPROVAL OF MINUTES OF THE LAST MEETING (Agenda Item II):
The Chair entertained a motion to approve the minutes of the last meeting held August 11, 2011 at 6:30 p.m. It was moved by Williams to accept the minutes of the last meeting. The motion was seconded by Morris. No discussion, the minutes were approved with no corrections.

INTRODUCTION OF NEW BOARD MEMBERS: MS. RUTH PRICE AND MR. WILLIAMS HARRISON (Agenda III)
The Chair welcomed new members, Ms. Ruth Price and Mr. Williams Harrison. City Council President Ceasar Mitchell appointed Ms. Price to fill the position vacated by J.L. Booker in April, 2010. Mr. Harrison was appointed by the full Council to replace Roderick Edmonds, who resigned December, 2010. Ms. Price and Mr. Harrison both addressed the Board and expressed how honored they were to be selected to be part of the Board.

Ms. Price said, “I am honored to serve on this Board. I think I bring a lot of expertise to the Board. I have twenty-six years with the Atlanta Police Department serving in many different capacities and I have been a citizen of Atlanta since 1972.”

Mr. Harrison stated, “I have always had a desire to serve on this particular board. I have the experience of the Fulton County Public Defender Office, as well as, civil experience. I have been a resident of the City of Atlanta since the year 2000.”

CONSIDERATION OF INVESTIGATION CASES #10-72 and #10-73, COMPLAINT OF SHAWN VENEGAS AND BRIAN KIDD - INVESTIGATOR MARC ADDINGTON
(Agenda Item IV)

The Chair directed members to Agenda Item IV, and Director Beamud’s memo to the Board dated August 29, 2011 summarizing the investigation of the complaints. Investigator Addington conducted the investigation and provided an oral summary of the complaint.

A. ALLEGATION SUMMARY

Addington reported that both of the cases involved an allegation of False Imprisonment and Excessive Force. Addington indicated that these are two separate cases but for the presentation, they are being consolidated into one report.

They involve Case #10-72, Mr. Brian Kidd and #10-73, Mr. Shawn Venegas. The incident occurred on June 30, 2010 at the intersection of Fulton Street and Whitehall Terrace in the City of Atlanta. The subject officers in both of complaints case are Officers Cayenne Mayes, Travis Britt and Dion Meredith.

B. SYNOPSIS OF INVESTIGATION

The complainants allege their vehicle was stopped for no legal reason. Mr. Venegas was the driver and Mr. Kidd was the passenger. Both complainants alleged they were subjected to excessive force by Officer Cayenne Mayes who approached the driver’s side of the car with firearm drawn and pointed at Shawn Venegas. In addition to this allegation, Venegas and Kidd allege that Officer Mays, Britt and Meredith engaged in an illegal and inappropriate search of their person and their vehicle in search for illegal contraband. Specifically, Kidd alleges that Officer Britt approached the passenger side and asked if they had anything illegal in the car. Kidd told him no. Officer Britt opened the car door and pulled him from the car and searched him without his consent. He (Britt) removed the contents from his pockets and opened his shorts to see if anything was in his pants. The officers asked Shawn Venegas for permission to search his car and Venegas denied them the consent. Despite this Venegas and Kidd were detained at the rear of the car by Officer Meredith, while Officers Mayes and Britt searched the car and trunk. The complainants said that Officer Meredith pulled Shawn Venegas’ pants down in public and required him to spread his buttocks in an attempt to search the area of the anal cavity to locate any illegal contraband. An outstanding warrant was discovered for the arrest of Brian Kidd for failing to appear in DeKalb County. He was arrested and searched a second time. Mr. Kidd said that Officer Britt, using gloves, searched his genital area. After the search, he said the officers discussed how they would charge them in order to justify the stop of the motor vehicle. Officer Mayes wrote a citation for failure to stop at a stop sign at Fulton and Ira Streets. There is no stop at this location.

C. WHAT THE INVESTIGATION REVEALED
The investigation revealed that on the day of the incident, the complainants were stopped in by the subject three officers and cited for a stop sign violation. Officer Mays initially reported that the vehicle ran a stop sign at the intersection of Windsor Street and Fulton Street. He reported this in his incident report and in the traffic citation that was written. Also, all three officers reported on their Daily Activity Sheet that the vehicle was stopped at this location as well. It was only after being confronted with the fact there is no stop sign at this described location did Officer Mayes amend his version of the incident. He claims that he made a mistake on the citation and police report about the location of the stop sign. Mayes said that the car ran a stop sign but the location was incorrect. When the officers approached the car, they allege they observed Brian Kidd attempting to conceal blunts or blunt wrappers. For this reason, they had the occupants step out of the car. They claimed Kidd and Venegas consented to be searched and to have the car searched. Officer Mayes said that he did not draw his firearm and point it at Venegas. In the police report he submitted, he neglected to note any of the observations about blunts or blunt wrappers. He did not mention anything about conducting a search of the vehicle based on the consent of the driver (Venegas) and/or passenger (Kidd).

They deny any of the officers had Mr. Venegas lower his pants in public. Mr. Venegas asserts that after they removed them from the vehicle, Officer Mayes removed the contents of his pockets and inappropriately searched the area of his groin. After this occurred, Venegas accused Officer Meredith of lowering his pants. He claims that as Meredith attempted to spread his buttocks looking for drugs, he appeared to be having difficulty doing this, so Meredith ordered Venegas to spread his buttocks himself so that he could inspect the area further. During his interview with both OPS and the ACRB, Brian Kidd corroborated this version of the incident. Officer Mayes claims he could not recall that this type of search was conducted by Officer Meredith. According to Venegas, after Brian Kidd was placed in custody, he was confronted by Officer Mays with a choice of being issued a traffic citation or being arrested. Mr. Venegas further alleges that he observed Mayes discussing this issue with Officers Britt and Meredith. Mr. Venegas expressed a need for probable cause to stop and search the vehicle and the need to justify the NCIC, GCIC inquiry that resulted in the discovery of Brian Kidd’s outstanding warrant. Mr. Kidd asserts that he observed this discussion while he was sitting in the rear of the officer’s vehicle. It was reasonable for Kidd to have overhead this because both he and Venegas claim this discussion took place while Mayes and Britt were seated in the front seat and Meredith stood near the door. In addition, the vehicle driven by the Red Dogs typically do not have screens that are used in other patrol vehicles. Officer Mayes issued Venegas a citation for failure to obey a stop sign and he was allowed to leave. The APD dispatch records indicated that the stop lasted approximately 45 minutes.

D. ACRB STAFF RECOMMENDATION
The findings in both the complainants case turns on several factors uncovered during this investigation. First, there were several inconsistencies provided by the officers as to where the actual stop violation occurred. The officers only explained the confusion about the violation location after they were interviewed a second time by OPS. These inconsistencies were apparent in the interviews and documentation of the stop and the subsequent traffic citation. The Daily Activity Report completed by the officer, only documented the one traffic stop but did not record any additional activity by the subject officers. A proactive unit such as the Red Dogs would most likely be engaged in more activity; hence, an attempt to document the stop only after the allegation was made by the complainants. Officers Britt and Meredith could not recall if Officer Mayes drew his firearm, but Officer Mayes was adamant that he did not draw his weapon and point it toward the car.

A decision was made during the investigation to submit the officers to truth tests. The CVSA test was administered by OPS and the Polygraph test was administered by GBI. Officers Mayes and Britt passed all questions. Officer Meredith failed some questions. The ACRB administered CVSA test to Venegas and Kidd. Venegas failed some questions and Kidd failed one question. The truth examination utilized during the investigation provides information that cancels each other out.
In addition to the truth test, a list of the three officers’ record involving prior similar allegations was considered for the recommendation. The adjudication of the allegations of Unlawful Imprisonment and Excessive Force must be determined on the basis of credibility. Truth tests are not reliable indicators as revealed in the officers’ record of prior and similar allegations. The similarity in prior allegations against the involved officers and the Red Dog Unit make it more likely, than not, this incident occurred as reported by the complainants. For this reason, the staff recommends a finding of Sustained be applied against all three officers for False Imprisonment and Excessive Force as alleged by Venegas and Kidd.

E. VOTE BY THE BOARD TO ACCEPT RECOMMENDATION

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

Discussion & Questions...

1. Bartels said, “Mr. Addington, I take it, the officers are saying consent was given to them to search Kidd and Venegas and was any of that in writing? Addington replied, “No sir.” Bartels also asked, “When officers are frisking somebody, is this part of the Terry Frisk, regardless of whether or not it is justified? In addition to putting down the outwearing clothing, is it standard procedure or policy to unbuckle someone’s pants, look inside and put his hands inside the pants as part of a Terry Frisk? Is this policy?” Addington stated, “It is not an APD policy and the only guidelines that APD policy stipulates is strip searches be done in a secure facility with medical personnel.”

2. To clarify Addington’s comments, Beamud added that medical personnel is required for cavity searches and the requirement for strip searches is that a supervisor be notified and that the strip search be performed at the correctional facility. Chair Morrissey asked, “I just want to be clear, in these two cases, are we talking about a strip search or a cavity search? Beamud stated, “Clearly there was a strip search. Regarding the cavity search, the buttocks were spread apart. In some case law and in many jurisdictions, any such touching of the skin and the spreading apart of the skin is considered a cavity search. I consider this a cavity search.”

3. Williams, “Is it not true that this strip search and cavity search occurred in the middle of the street and they did not have an opportunity to pull their vehicle over. Is this correct?” Addington answered, “That is correct.” Williams continued, “Is it also true, Mr. Kidd said the officers were never given permission to search their person or their vehicle?” Addington indicated it was true.

4. R. Johnson, “How long was the stop and what is the average amount of time something like this takes?” Addington said, “It is hard to say. Forty-five minutes in some cases, may not be considered excessive, but in this case, I think it was.”

5. Williams, “Following the search, did Officer Mayes also say, “What are we going to do with you now?” because they were trying to create a reason for probable cause? Addington said, yes.

6. C. Johnson asked, “Procedurally, how common is for the Internal Affairs to conduct truth verification examinations and who decides? Addington answered, “I can’t give you a specific number how often it happens during the year. I think it would be safe to say that it happens more than once, I would assume. The odd thing about this particular case is there was a decision made prior to giving the officers a CVSA. They were also going to submit them to a subsequent polygraph which is outside the normal procedures. I think, normally, they just do one or the other; unless the officer fails and then they give them the opportunity to take a second test. The decision to test, I believe is a command decision and an investigative decision when the decision is made first to take the test. I would imagine it could also be permissible for the officers to request one to clear his name and also, based on the egregiousness of the complaint. Secondly, because the lack of witnesses, but a lot of the OPS cases are ‘he said-she said’ versions where there is not a test conducted.”

7. Bartels, “Considering the polygraph issue, are you aware of any control, double-blind scientific studies that have been done on polygraphs testing that have been published?” Addington answered, “Most of the literature out there, comparing CVSA to Polygraph, consider Polygraphs to be more accurate but no test is 100% reliable. Beamud added, “The academic studies, not commercial studies, on polygraphs and CVSA have indicated that it is no more or less reliable than a human being listening to a subject. The courts have made a constant and affirmative decision that truth tests are not reliable.”

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

- Regarding Shawn Venegas Complaint #10-72, it was moved by Williams to accept staff’s recommendation to sustain the allegations of False Imprisonment and Excessive Force against
all three officers. Bartels seconded the motioned. Hearing no further discussion the motion was approved unanimously.

- Regarding Brian Kidd, Complaint #10-73, it was moved by Bartels to accept staff's recommendation to sustain the allegations of False Imprisonment and Excessive Force against all three officers. Williams seconded the motioned. Hearing no further discussion the motion was approved unanimously.

F. RECOMMENDATION AND VOTE REGARDING DISCIPLINE

Addington stated, “There are several work violations regarding the Board’s sustained allegations. They are as follows: appropriate action required; obey the law as it pertains to the False Imprisonment allegation; conduct; abuse of authority; unauthorized force and conformance to directives.

- OPS categorized work rule violations from Category A, for the least egregious violations. The punishment for this category is oral admonishment or written reprimand; OPS categorized work rule violations from Category B, C, and D for progressively more serious misconduct violation.
- Category B is written reprimand; a one or two or three day suspension;
- Category C is a four to fifteen day suspension;
- Category D is a sixteen to thirty day suspension, demotion or dismissal.

Chair Morrissey directed the Board to look at Beamud’s complaint summary memo, and review the Prior Similar Allegation (page 3) of these officers. Addington provided the following summary of the Officers discipline record:

- Officer Cayenne Mayes was hired in 2006. He has a total of 10 disciplinary cases since his date of hire. Four (4) of the cases involved Use of Force and it is important to note that several of the cases in Officer Mayes’ past involves allegation of inappropriate touching of an individual, the inappropriate exposing of buttocks, and the occurrence of improper or illegal searches. The work rule violations regarding cases #10-72 & #10-73 should be counted as two violations since the conduct occurred both in the complaints of Venegas and Kidd. The violations are: appropriate action required; obey the law; conduct; abuse of authority; unauthorized force; conformance to directives. All of which fall into Category A through D violations listed in the APD-SOP on Discipline with the exception of unauthorized force which is a Category C through D violation. It is important to note Officer Mayes has currently terminated from APD due to a previous infraction.

- Officer Travis Britt is only accused of False Imprisonment. His Prior Similar Allegations consist of five (5) disciplinary cases total since his 2006 date of hire. This includes two prior cases that involving allegations of improper illegal searching. One of the cases Britt was found to have inaccurately completed an incident report. The work rule violations here are: appropriate action required; obey the law; conduct; abuse of authority; unauthorized force; conformance to directives. These violations fall into Category A through D.

- Officer Dion Meredith was hired in 2006. He has five (5) disciplinary cases since his date of hire. He was involved in one previous case that involved an allegation of illegal search and false imprisonment during the same situation. The work rule violations that apply to Meredith regarding #10-72 and #10-73 should also carry two violations since the conduct occurred in the complaints of both Kidd and Venegas. Those violations are: appropriate action required; obey the law; conduct; abuse of authority; conformance to directives. All of which fall into Category A through D violations listed in the APD-SOP on Discipline.

The Chair opened the floor for discussion.

Discussion...
1. Williams said, “Since Officer Mayes has been fired, what is there left to do?” Beamud replied, “The DOJ, in the same report presented by Mr. Addington, also recommends completing investigations when a person is no longer with the Department either through resignation or firing. Their recommendation is that you adjudicate it and I would suggest that you recommend to the Chief what we would do had he been employed. The reason that I suggest that is because we do not know when and if the Civil Service Board overturns the disciplinary decision of the Chief and if he is ordered reinstated, it would be helpful to the Chief to have a case with which to go forward.”

2. Bartels, “I think we need to consider not just what each officer did but also what we believe he may have allowed the other officer to do. I think if we find that the citizen who made these complaints is credible, then what happened here was a sexual assault. There is no two ways about this and if an officer allowed this, he is tolerating a sexual assault in his presence.”

3. Williams asked if Officer Meredith was one of the officers involved in the Eagle Bar situation. Addington replied yes, and that this incident occurred after the Eagle Bar complaint.

4. Price expressed concern about recommending lengthy suspension or termination. “If you recommend this to the Chief, and he accepts the recommendation, it will be overturned by the Civil Service Board.” Bartels responded, “I’ll just reiterate the comments I made earlier regarding Officer Britt. I believe we should consider termination in light of everything that we know about this case. I appreciate Ms. Price, your experience and I understand your belief that we need to keep in mind what might be overturned or what will be upheld by the Civil Service Board, but I still feel we should recommend termination.”

Following the discussion, the Chair entertained a motion regarding the sustained allegations. The Board will vote on each officer separately.

- False Imprisonment Allegation against Officer Britt
  
  First Motion: It was moved by Bartels to consider the violation a Category D. The motion was seconded by Altienee. Hearing no opposing vote, the motion was approved unanimously.
  
  Second Motion: It was moved by R. Johnson to recommend twenty (20) days suspension for Officer Britt. The motion was seconded by Hubbard. Hearing no further discussion, the motion was approved unanimously.

- False Imprisonment and Excessive Force against Officer Mayes
  
  Williams moved to have Officer Mayes terminated should he be reinstated to the APD force. Bartels seconded. Hearing no further discussion, the motion was approved unanimously.

- False Imprisonment and Excessive Force alleged against Officer Dion Meredith
  
  It was moved by Bartels to recommend termination of Officer Meredith. Williams seconded.

Discussion...

1. Morris asked Bartels to explain the difference in the behavior and discipline for Britt and Meredith. Bartels replied, “As opposed to Mr. Mayes, I believe if we find what the witnesses say is credible, and I believe they do, this is a sexual assault. I believe it is appropriate to consider termination if a police officer is there for 45 minutes and allows this to happen.”

2. To clarify, Price asked, “When you discuss prior infractions, do you really look at them to see what was the final analysis to see if they were sustained just because they were allegations. Can the investigator tell me the ruling on the prior five cases. Because if you are going to bring it up, you should be able to tell me what was the final analysis and conclusion of these prior allegations.” To answer Ms. Price question, Investigator Addington said, “Meredith only has three prior cases in his disciplinary file. One was for the Eagle case which the final finding in that case was sustained; a Failure to Appear charge, which was sustained, and an Appropriate Action which was not sustained. The majority of the complaints that we look at for all officers are often given a finding of not sustained. The trend that we see in the cases of OPS, if there is something such as a vehicle accident or failing to appear for court case, those cases are usually sustained. The other allegations where complaints are alleging something different, there is a trend in those cases to not sustain by OPS.”

3. Price asked, “Did this particular incident happen after the Eagle?” Addington said yes.
4. Regarding Addington’s comments, Bartels said, “I would think that this is more than a trend. My experience has been, whenever we do sustain an allegation against an officer, it has always been rejected. Since I have been on the board, I can only think of two exceptions... one is the Eagle raid and the other is the case a couple of months about the videotaping or recording police officers. Those are the only two I can think of which we sustain and the police did not reject.” Price asked, “Are you saying that from your findings there have only been two times that Atlanta Police Department’s OPS agreed with your findings?” Bartels clarified, “Yes, when we have sustained an allegation. APD always agrees with us when we don’t sustain or when we exonerate an officer. Please correct me if I am wrong but I can only think of two times, since I have been on the Board when we find the allegation is sustained that OPS has agrees with us.” Addington added, “There was one other, James Hereford’s complaint, who was falsely arrested in the stairwell. Initially, OPS did reject our sustain finding, but decided to reopened the case following further investigation. Price, “I am correct in saying ‘not sustain’ does not mean that it did not happen, what it says is the evidence did not support the allegation that the complainant said was true. Is this correct?” Bartels said, “Yes that is what it means and we all agree on that.” Morrissey said, “Yes we all agree on the meaning, but it is very telling that every case that we have adjudicated with the exception of three, in the years we have been here, our findings have been rejected and that is very telling and statistically, that cannot be true. We take a lot of things into consideration and regardless of their adjudication, patterns of conduct that we see by officers, and similar names continue to come up time and time again, we have to take that into consideration. It we don’t, we don’t know who will. We simply have not found that degree of trust with OPS yet; however, I am hopeful everything I have seen in the past year or so, will give me even more hope.”

5. R. Johnson added, “I want to add to Paul’s (Bartels) comments regarding the culture and seeing Officer Britt as guilty as the other officers. What do you think would happen to him if he were to say, ‘Stop this is wrong!’ to the other Red Dog officers? He is fairly new, he was hired in 2006, so what do you think those officers would have done if he had intervened and suggested calling a supervisor?” Price answered, “I believe a supervisor should have been there. The officers, on that particular day, were all on the same level and they are not going to stop each other. I blame the supervisor because when you keep seeing the same allegations, then you have a training issue. This office, as well as OPS, should look at these situations and that will show the strengths and weaknesses of the department. All discipline does not have to be negative, they can be positive. This needs to be brought to Chief Turner’s attention that we keep getting the same allegation and maybe APD needs to retrain these officers. The situation that took place that day, where was the supervisor and did anyone file a complaint against the supervisor?”

6. Williams clarified, “Ruth (Price), just so that you are aware, we have recommended training, especially training dealing with Terry stops.”

Following the discussion, the Chair called for the vote. The motion was approved with one NO vote by R. Johnson.

CONSIDERATION OF INVESTIGATION #11-16 – COMPLAINT OF OLAJUWAN WILSON – INVESTIGATOR SHEENA ROBERTSON (Agenda Item V)

The Chair directed members to Agenda Item V. Investigator Robertson provided an oral summary of the complaint.

A. SUMMARY OF ALLEGATION

Investigator Robertson reported that Mr. Olajuwan Wilson, a 17 year old African American male, filed an Excessive Force complaint with the ACRB. Mr. Wilson alleges that on September 28, 2010, Officers Jonathan Cornelius, James Devoto, Dimitri Caldwell and Robert Godwin, members of the now disbanded Red Dog Unit, engaged in unnecessary and excessive force when they physically assaulted him during an arrest.

B. COMPLAINANT’S INTERVIEW

Robertson indicated that according to Mr. Wilson, he was at the M&M Grocery Store located at 911 Joseph E. Boone, Blvd., retrieving some items for his mother when he was approached by Officer
Cornelius. Mr. Wilson said Officer Cornelius approached him and asked if he could search him. Mr. Wilson said he replied, “What for, I did nothing wrong.” He said the officer then told him that if he did not allow him to search, he would be arrested; so he consented to the search. He said Officer Cornelius initially began to search his pants pockets and found nothing illegal. He then unbuckled his belt, reached inside his pants and touched his genital, buttocks and anal areas and again did not find anything illegal. Mr. Wilson said after the search, Officer Cornelius instructed him to turn around. Mr. Wilson said he complied; however, because of what had just occurred and out of fear, he ran out of the store towards his home, 950 Neal Street, approximately three blocks away. Mr. Wilson said as he was running, he saw several unidentified Atlanta Police Officers chasing him. Mr. Wilson said when he reached his house, he jumped over a fence, tripped and fell face-down in the front yard. He said before he had an opportunity to get up, an unidentified Caucasian officer jumped on his back and forcibly held his face to the ground. Mr. Wilson said at that time, he noticed that he was surrounded by numerous APD officers who then began to beat him throughout his body. Mr. Wilson said, at one point, he began to feel nausea and vomited because of the numerous hits he received to his abdomen.

Mr. Wilson said when the officers finally picked him up off the ground he was searched again, this time by a different officer and the search was more aggressive. He said the officer snatched his belt off, went inside his pants and pulled, tugged and adjusted his genitals and buttocks. He was then forcibly placed in the backseat of the patrol car and transported to the gas station located across the street from where he first encountered Officer Cornelius (M&M Grocery Store). Mr. Wilson said that before they arrived at that location, he vomited on himself. He said once that before they arrived at the gas station, the officers took him out of the patrol car, moved his arms from his back to the front and ordered him to remove his pants because they did not want to touch him since his clothing was covered with vomit. He said after he removed his pants, the same officer again searched him and found nothing illegal.

EMS arrived and he was taken to Grady Hospital where he stayed for approximately three days before being released and transported to Fulton County Jail.

Mr. Wilson adamantly stated that he did not have any illegal substance on his person and there was no reason why he should have been stopped and searched.

C. MEDICAL RECORDS AND COURT RECORDS

Robertson reported ACRB obtained and reviewed Mr. Wilson’s medical records. The records indicated that on September 28, 2010, the day of the incident, Mr. Wilson was seen in Grady’s Emergency Room (ER). Mr. Wilson reported to the ER staff he had been hit in the abdomen by the police. Mr. Wilson was admitted and treated for nausea. All examinations were benign and lab results were normal. Mr. Wilson was discharged the following day and transported to the Fulton County Jail.

The court records revealed that Mr. Wilson was arrested September 28, 2010 and charged with four counts of obstruction of law enforcement and possession of marijuana less than one ounce.

Mr. Wilson’s counsel filed a motion to suppress on the grounds that the arrest of Mr. Wilson was illegal. The suppression hearing was held January 18, 2011 and the motion was granted. The judge held that Mr. Wilson ‘had the right to withdraw any consent to search he may have given and to run from a ‘first-tier police-citizen encounter.’’ Mr. Wilson’s case was placed in ‘dead-docket’ status.

D. WITNESS INTERVIEWS

During the interview of eyewitnesses to the incident, including Ms. Annabel Thomas, Mr. Wilson’s mother, all corroborated Mr. Wilson’s claim that he was beating by the officers when they apprehended him on the ground

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According to Ms. Thomas, on the day of the incident, she was at home when she heard a commotion in her front yard. She went outside and observed her son, Olajuwon, lying face down on the ground and there was an unidentified Atlanta Police Officer with his knee in Olajuwon’s back. She further stated that the officer and several other officers were smashing Olajuwon’s face into the ground and repeatedly hitting him. Ms. Wilson said she was yelling and repeatedly asking the officers to stop beating her son.

Ms. Thomas stated that an unidentified African American officer pulled out his firearm, pointed it in her direction and told her, “Don’t make me have to use this.” Ms. Thomas said that she was so concerned about her son that she told the officer to do what he had to do. She said at some point, the officers picked her son up from the ground, put him in the patrol car and left. Ms. Thomas said she then went back into the house to retrieve her handbag so she could meet the officers and her son at the Fulton County Jail because she assumed that where they taking him.

Ms. Thomas said while retrieving her handbag, an individual, she knows only as “Tony” came and told her that the police had her son at the corner and he was naked. Upon hearing that, she said she immediately went to where he was being held. Ms. Thomas said when she arrived at the location, she observed her son in his underwear lying on a gurney in the ambulance. She said she also noticed that an officer was shaking out Olajuwon’s pants; a few coins and a piece of candy dropped out of the pockets. She said at some point, the officer gave her Olajuwon’s soiled clothes.

E. OFFICER INTERVIEWS
Interviews were conducted with all of the involved officers except Officer Dimitri Caldwell because the allegations were brought forth subsequent to his resignation from APD (he resigned 4/12/11) for reasons that are unknown to us. According to Caldwell’s supplemental report, he did not report that anyone struck Mr. Wilson. He said that Wilson refused to give up his hands and that he assisted the officers by getting one of the cuffs on him.

Officer Godwin admits he struck Wilson once in the face but contends that the use of force was justified because Wilson was resisting by refusing to surrender his hands in order to be handcuffed.

Officer Devoto denies hitting Wilson and also denies any of the officers' struck him, although Officer Godwin admitted that he did strike Wilson.

Officer Cornelius arrived on the scene after Wilson was apprehended and he denies striking or witnessed anyone striking Wilson.

F. STAFF RECOMMENDATION REGARDING COMPLAINT #11-16
Therefore, given the aforementioned facts, the ACRB staff recommends the following:

The allegation of “Excessive Force” against Officers James Devoto, Robert Godwin, as well as, Officer Dimitri Caldwell, even though he no longer with the Department, is assigned a finding of “Sustained.” Despite this, Officer Caldwell’s resignation and lack of interview, it is clear that he engaged in this conduct.

The allegation of “Excessive Force” against Officer Jonathan Cornelius assigned a finding of “Not Sustained.” There is insufficient evidence to indicate that he was present when the assault occurred. Regarding the search where we know Cornelius was involved and there were also allegations about other officers who searched him, staff did not make a determination into that allegation because it is not within the Board’s purview. However, the Board may want to recommend that the APD investigate.
G. VOTE BY THE BOARD TO ACCEPT RECOMMENDATION

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

Discussion...

1. Morris asked Robertson, “On page five of your report, you indicated that Ms. Thomas went to the Police Department, OPS office to file a claim on behalf of her son, but they told her she could not do that without him being present, even though he is a minor. Is that a fact? Robertson replied, “They do have a complaint but whether or not that occurred, I can’t say because I did not investigate if that actually happened and I do not know if that is an OPS policy that the actual complainant must be present even though he/she is a minor. Perhaps Major Dancy can clarify if that is policy.”

It should be noted at this time, the Chair asked Major Dancy of OPS, to clarify if this is an APD policy where the minor must be with the parent in order file a complaint.

2. Major Dancy stated that the parent would be able to file the complaint on behalf of the minor. “Absolutely, we would accept the complaint from the parent and in reference to this complaint, one was filed, it is open and we are investigating it.”

3. Williams asked, “Since the complaint involves a 17 years old juvenile, is he considered a minor or an adult?” Major Dancy, “The State of Georgia considers anyone 18 or older as an adult; however, in certain cases, the courts can incarcerate a 17 year old as an adult. If you are arrested at 17, you will go to the same jail where 16 or younger are held.

4. Bartels, “The search Mr. Wilson said that Officer Cornelius performed on him, which sounds like the previous case, were there any other witnesses you could find that could corroborate that this happened? Robertson, “No. When I went to the store, two of the employees I spoke with said they were not present on that day; however, they mentioned that another employee was present and he may have seen what happened. I tried several times to contact this employee, but I was not successful.” Bartels asked, “Where you able to determine the identity of the second officer?” Robertson replied, no.

5. Bartels asked Beamud, “It looks like the only charges here are Excessive Force, and could this also be considered a False Imprisonment issue? The Judge that heard the suppression motion found that this was a first-tier Terry stop, voluntary, which meant that the Judge found there was not reasonable suspicion. The basis that was given for stopping Mr. Wilson was that he put his hands in his pants at the sight of the police and turned and walked into the store. Beamud stated that she had not looked at it that way, but it is possible.

6. R. Johnson, “In regards to the stature of the complainant, what was his weight?” Morris indicated that the medical report noted his weight at 150 lbs. R. Johnson, “That’s still thin, and it took three officers to take him down.” Williams expressed concern about bodily injury and if it would have been appropriate to include this charge along with Excessive Force. C. Johnson stated that if there was a trip report provided by EMS, it may provide some information on his injuries. “Otherwise, we have nothing documenting an injury.” Robertson said that she did not get the EMS trip sheet but he did complain to the medical staff that he had been struck several times in his stomach.

Hearing no discussion, the Chair called for a motion.

It was moved by C. Johnson to accept the staff’s recommendation to Sustain the allegation of Excessive Force against Officers James Devoto, Dimitri Caldwell and Robert Godwin and to Not Sustain the allegation of Excessive Force against Officer Jonathan Cornelius. The motion was seconded by Morris.

Discussion...

1. Bartels stated, “I’m inclined to accept the staff’s recommendation based on the complaint as an Excessive Force. The evidence shows that when the three officers were struggling and fighting with Wilson, Officer Cornelius, who had made the initial stop, was elsewhere? By the letter that would be a correct recommendation, but what is concerning about this is I think this should also have been a False Imprisonment stop and Officer Cornelius initiated the stop. I believe that he did not have reasonable, articulable suspension to detain Mr. Wilson. I also think there is some evidence that he
conducted an intrusive search on him not unlike the searches that we heard about in previous case. I say this because in the report submitted by Officer Godwin, after Wilson was handcuffed, Officer Cornelius told him (Godwin) that he saw a small baggie containing marijuana in Mr. Wilson’s underwear and at this point, Goodwin indicated that Officer Cornelius stated Mr. Wilson punched him in the arm and took off running. I am concerned for two reasons, 1) This information about the marijuana comes from Officer’s Godwin’s own report that said Officer Cornelius told him he saw the marijuana in Mr. Wilson’s underwear and 2) no contraband was recovered. So if this was true, where’s the marijuana?

2. C. Johnson asked how is the determination made regarding the category of the complaint and how it should be investigated. “Does the staff determine the category that the complaint falls under or is that something that is suggested to complainant by staff to help them? How does that come about?” Robertson stated, “Cristina (Beamud) screens the complaints and the Board votes on whether or not to accept.”

3. C. Johnson, “You have investigated this complaint from the standpoint of Excessive Force rather than False Imprisonment. At this point, as a body, if we can decide to table this vote, or I can withdraw my recommendation and have the staff go back and make another recommendation or we can say, the Board has look at this recommendation and feels that there should be some additional recommendations regarding the Officers.” Beamud stated that this had not been done before, but the Board has the authority. “It is just a matter of you deciding.”

4. C. Johnson stated, “With that being said, I withdraw my motion and we can table our vote pending further investigation.” Bartels indicated that he agreed. “In fairness to everybody including the officers, I don’t think we should consider voting tonight. We need to reset and not necessarily, so much, to try and get additional evidence, because I understand that staff tried to call the witness, but to do some sort of legal analysis so that staff can make a recommendation. Time can then be allowed for us to look over it and do it in a deliberate fashion.”

5. Morris stated, “There are no additional witnesses and I am not sure if we will know anymore a month from now then we know now.” Bartels answered, “Sometimes when you are trying to determine whether a stop was justified, it can be on the edge and sometimes worthwhile to do a little bit of legal research, which the staff does a great job, pulling out a few cases that will help guide us to a decision.”

6. To clarify, Robertson asked, “You want us to do a legal analysis and look at some case law to see whether a False Imprisonment can be recommended for you to consider.” Bartels replied, yes. Alinnie also asked Robertson, to get a copy of the EMS trip report.

Hearing no further discussion, the Chair entertained a motion. Williams moved to table the case to allow staff time to further review the case to determine if a False Imprisonment recommendation should be made for consideration at the next board meeting. Bartels seconded. Hearing no further discussion, the motion was approved.

DISMISSAL OF COMPLAINT #11-23, COMPLAINT OF JAMIE SMITH – INVESTIGATOR MARC ADDINGTON (Agenda Item VII):

Investigator Addington summarized the request for dismissal of the complaint made by Jamie Smith.

He reported that the case involved Officer Kenneth Thomas with an allegation of False Imprisonment. “In an attempt to contact Ms. Smith on several occasions, she did not respond to our request for interviews. At the last Board Meeting, when the case was presented, we were given additional information that Ms. Smith may have been incarcerated at Fulton County Jail; however, a review of the jail records indicated that she was not in custody. We also received additional information that she may have been in State custody. We found a Jamie Smith in custody; however, this was not the Jamie Smith we were looking for since this person was in custody when this incident occurred. To this date, we have been unable to make contact with her and therefore, ask that the case be dismissed.”

The Chair entertained a motion.
It was moved by *Morris* to accept the staff recommendation to dismiss complaint #11-23, Jamie Smith. The motion was seconded by *Bartels*. No further discussion, the motion was unanimously approved.

**DISMISSAL OF COMPLAINT #11-33, COMPLAINT OF CEDRIC BARNHART – INVESTIGATOR SHEENA ROBERTSON (Agenda Item VII):**

Cedric Barnhart complaint #11-33 is being recommended for dismissal. *Investigator Robertson* reported that on May 17, Mr. Barnhart filed a complaint with the ACRB alleging that on January 1, 2011, APD Officer Antonius Black, falsely arrested and charged him with Aggravated Assault and Theft by Shoplifting. At the time he filed his complaint, his criminal case was still pending adjudication in the Fulton County Superior Court.

On June 9, 2011, the aforementioned information was presented to the Board for consideration. The Board agreed to suspend the investigation until adjudication of the criminal case.

According to the Fulton County Superior Court records, Mr. Barnhart pled guilty August 4, 2011 to Simple Assault and Theft by Shoplifting. As penalty, he was sentenced to 12 months probation for each count. Therefore, based on these facts, the ACRB Staff recommends that the Board dismiss Mr. Barnhart’s complaint because it does not meet the definition of false arrest which defines the authority of the Board.

The *Chair* entertained a motion to accept staff’s recommendation.

It was moved by *Morris* to accept staff recommendation to dismiss the complaint made by Cedric Barnhart, Case #11-33. The motion was seconded by *Hubbard*. Hearing none, the motion was approved.

**INTAKE REPORT FOR AUGUST, 2011 (Agenda Item VIII)**

A copy of the Intake Report was included in the Board packets. *Director Beamud* reported nine (9) complaints were received for the month of August, 2011. The following is a list of those complaints and recommendations by the staff:

- **#11-45 / Jermaine Cobbs alleging Harassment**
  Mr. Cobbs was sent a complaint form and an email explaining the necessity of a signed complaint. He has not returned the complaint signed. Staff recommends dismissal for failure to file a signed complaint.

- **#11-46 / Sharon Cooper alleging Poor Investigation**
  Staff recommends this complaint be dismissed because it happened in 2006.

- **#11-47 / Tremayne Jordan alleging Excessive Force**
  Staff recommends an investigation into the excessive force allegation.

- **#11-48 / Todd Pritchett alleging Improper Tow**
  Staff recommends dismissal because the matter is not within the ACRB’s jurisdiction.

- **#11-49 / Joe Alcock alleging Poor Service**
  Staff recommends dismissal because the matter is not within the ACRB’s jurisdiction.

- **#11-50 / Hattie Smith alleging Failure to Take a Police Report**
  Staff recommends dismissal because the matter is not within the ACRB’s jurisdiction.

- **#11-51 / Matthew Cardinale alleging Harassment**
  Staff recommends dismissal because the matter is not within the ACRB’s jurisdiction. Harassment is defined as the act of tormenting by continued persistent verbal or physical attacks.
• #11-52 / Robert Hill alleging Poor Service
  Staff recommends dismissal because the matter is not within the ACRB’s jurisdiction.

• #11-53 / Ezeoke Parks alleging Abusive Language and Excessive Force
  Staff recommends investigation into the allegations of excessive force and abusive language.

The Chair entertained a motion to accept the Director’s Intake report. 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 Williams.

REPORT FROM THE PUBLIC OUTREACH COMMITTEE (Agenda item IX):

Williams reported the progress of the Outreach Committee. He said, “We are moving along and have made a lot of progress. I am happy to report Pamela Aliniee has been able to rejoin our committee and we are all grateful for her. To bring you up to date, we are starting to pull together our first draft copy and develop a list of stakeholders. If you have any recommendations to add to this list, please email this information to me. We try to meet weekly when we can but our next meeting will be Wednesday September 21st at 1:00 p.m. at the ACRB office in their conference room.”

The Chair reported that Williams, Beamud and Addington will be traveling to the NACOLE conference next week in New Orleans.

PUBLIC COMMENTS (Agenda item X):

Chair Morrissey opened the floor for public comments. It should be noted that no one signed up to speak.

ADJOURNMENT (Agenda item XI):

Chair Morrissey entertained a motion to adjourn. Williams moved to adjourn the meeting. The meeting adjourned at 9:01 p.m.

Approved as to form and content,

[Signature]
Date: 10/13/11