

**APPROVED**  
**CITIZENS POLICE REVIEW BOARD MEETING**  
**CITY OF FORT LAUDERDALE**  
**CITY HALL 8<sup>TH</sup> FLOOR CONFERENCE ROOM**  
**100 NORTH ANDREWS AVENUE**  
**FT. LAUDERDALE, FLORIDA 33301**  
**June 13, 2011 – 6:00 P.M.**

<b>Board Members</b>	<b>Attendance</b>	<b>1/2011 – 12/2011</b>	
		<b>P</b>	<b>A</b>
Alan Stotsky, Chair	P	3	0
Eileen Helfer, Vice Chair	P	3	0
Marc Dickerman	P	3	0
Ted Fling	P	3	0
Lt. Glenn Galt	P	3	0
James Jordan	P	3	0
Officer Nina Justice	P	2	1
Roosevelt Walters	P	3	0

**Staff**

A/Captain Dana Swisher, Internal Affairs  
 Brigitte Chiappetta, Recording Secretary, Prototype, Inc.

**Communications to City Commission**

None.

**A. Roll Call**

Chair Stotsky called the meeting to order at 6:00 p.m. and roll was called.

**B. Approve Minutes from April 19, 2011**

**Motion** made by Mr. Walters, seconded by Vice Chair Helfer, to approve the minutes of the April 19, 2011 meeting. In a voice vote, the **motion** passed unanimously.

**C. General Information**

Chair Stotsky advised that Sgt. Michael Dodson will join the Board as a new member.

Cleven McElvy, Complainant, introduced himself to the Board at this time.

**D. Review the following Internal Affairs Investigation**

**1. IA Case 111-09**

<b>Complainant:</b>	Mr. Cleven McElvy
<b>Allegations:</b>	1. Unnecessary use of force 2. Discourtesy
<b>Officer:</b>	Ivory Nelson
<b>Dispositions:</b>	1. Unfounded 2. Not Sustained

With regard to the disposition of the Discourtesy allegation, Mr. Jordan stated that while Mr. McElvy's statements were not justified, the Officer could also have handled the issue more tactfully. He felt the allegation of Discourtesy should be sustained.

Mr. Jordan asked if it is unusual for the State Attorney's Office to take two years to return findings on a case. Captain Swisher said this is not usual, and explained that all cases involving use of force are sent to the State Attorney's Office for review at the close of a case; for this incident, the State Attorney's Office had wanted the case when the investigation was concluded. He did not know the reason the case had been at the State Attorney's Office for this length of time, and added that updates on the case were requested periodically by Internal Affairs, with no response until the findings were returned.

**Motion** made by Mr. Walters, seconded by Officer Justice, to recommend that the Board accept the findings of Internal Affairs.

Mr. Walters asked which of the Officer's actions Mr. Jordan felt to be discourteous, based upon the information before the Board. Mr. Jordan said while he understood that there were vagrants in the area where the incident occurred, the Officer could have recognized that Mr. McElvy was not the individual causing trouble in that area rather than engaging in verbal discussion.

He added that he did not understand whether or not Officer Nelson reached out before or after Mr. McElvy fell. Mr. Walters observed that this answer depended upon whose account of the incident was read. He said when an allegation is sustained, there should be some kind of proof that it occurred; in this case, four witnesses have different statements regarding what happened.

Mr. Jordan said there was "no way" the unnecessary use of force could be sustained due to the differing accounts of the incident; however, he stated again that the Officer could have recognized Mr. McElvy was not a problem and moved on.

Chair Stotsky pointed out that the Officer was on his personal time and ultimately did let the issue go. Mr. Walters reiterated that this is also dependent upon whose statement is read.

Lt. Galt said he felt Officer Nelson went out of his way to use his discretion and not make an arrest in this incident. He noted that the Discourtesy allegation refers to a specific statement attributed to Officer Nelson, and there was insufficient evidence to sustain that charge.

The Board asked Mr. McElvy to give his account of the incident at this time. Mr. Dickerson noted for the record that Officer Ivory Nelson was also present at tonight's meeting.

Mr. McElvy stated he was resting on the curb and another individual was sitting in the parking lot when Officer Nelson advised they had to leave, as they were trespassing. Mr. McElvy said he had not seen any No Trespassing signs in the area. He said Officer Nelson informed him if he returned to the area, he would be arrested for trespassing. Mr. McElvy said he had told Officer Nelson he was resting his legs, as he was disabled; he had asked Officer Nelson, "Have you ever heard of the ADA [Americans with Disabilities Act]?" He said Officer Nelson responded using inappropriate language to refer to the ADA.

Mr. McElvy said he had responded to Officer Nelson, also using inappropriate language, and turned to walk away. Officer Nelson then told him he was going to jail and drove up behind Mr. McElvy in his car. Mr. McElvy stated he felt Officer Nelson's hand on his arm and "the next thing I knew I was on the ground." He said the Officer told him to get up and Mr. McElvy said he could not. Officer Nelson asked if Mr. McElvy wanted him to call the paramedics. Mr. McElvy said he did. At this time a third individual approached Officer Nelson and asked to speak to him. He said Officer Nelson left him on the ground and went into the street to speak to the individual.

Mr. McElvy said he asked the individual to inform the Officer that he was disabled, and then pulled himself up using the mirror of the car. He informed Officer Nelson that he planned to speak to Chief Adderley. He spoke to Chief Adderley at a later time and was asked if he wished to file a complaint.

Mr. McElvy said he and Acting Captain Swisher had gone to the site where the incident occurred, and he had asked Acting Captain Swisher how he could be trespassing. Acting Captain Swisher told him this was a tactic used by some Officers to prevent people from congregating in an area. Mr. McElvy said he did not feel Officer Nelson had had sufficient reason to use this tactic with him. He reiterated that there were no No Trespassing signs in the area at the time.

Mr. Walters asked if Mr. McElvy was sitting on the Sistrunk side or the 15 Way side of the street. Mr. McElvy said he was on the 15 Way side. He confirmed that the address cited in the report was the address of a hot dog stand. Mr. Walters asked if Mr. McElvy felt he had fallen "as a result of what the Officer did, or for some other reason." Mr. McElvy said this had happened very quickly, and stated again that Officer Nelson had touched his arm and the next thing he knew he was on the ground.

Mr. Walters asked if the third individual was present when the incident began. Mr. McElvy said he was on the ground when this individual had arrived.

Officer Justice asked Mr. McElvy if he lived in the area where the incident occurred. Mr. McElvy said he had lived there for 59 years. Officer Justice asked if he had ever previously seen or heard Officers asking people not to trespass on the property where the incident occurred. Mr. McElvy said he had not. Officer Justice asked why Mr. McElvy had not left the area when Officer Nelson first asked him to. Mr. McElvy said he had explained to the Officer that his doctor advised him to "walk as far as I can and then rest my leg...and then walk again." At this time he had asked the Officer if he was aware of the ADA.

Officer Ivory Nelson stated that he had received orders from the Chief of Police to remove people from the corner where the incident occurred, as the business owners had reported problems with people drinking and littering in the parking lot. He explained that he regularly checked the parking lot before, after, and during his shifts. He said he had asked Mr. McElvy and the other man in the parking lot to move, as they were trespassing and the business was closed. He said Mr. McElvy immediately began cursing at him and calling him names.

Officer Nelson said he had informed Mr. McElvy that he was under arrest. As he approached, Mr. McElvy had fallen to the ground. He asserted that Mr. McElvy had turned to run and tripped, and said he had not touched Mr. McElvy. He approached to help Mr. McElvy up and he began cursing at Officer Nelson once again. He asked Mr. McElvy if he needed medical attention and Mr. McElvy cursed at him again.

Officer Nelson said the third individual had approached him because she had an unrelated emergency. While he was speaking to this person, he saw Mr. McElvy get up and walk away. He said he let Mr. McElvy go because "that ended the problem" when he left the area of the business. He concluded that he had not said anything "outrageous" to Mr. McElvy, at that time or ever.

Mr. Walters asked if Officer Nelson denied using inappropriate language to refer to the ADA, noting that this was also denied in Officer Nelson's statement. Officer Nelson asserted that he had never made this statement. He said he had not heard the mention of the Americans with Disabilities Act until it was presented to

him by Internal Affairs. He added that Mr. McElvy had also not mentioned the ADA, and stated the only two words Mr. McElvy used were “the F word and the N word.”

Mr. Walters noted a discrepancy between Mr. McElvy’s and Officer Nelson’s descriptions of where Mr. McElvy was sitting. Officer Nelson said Mr. McElvy’s friend was sitting in the parking lot in a chair and Mr. McElvy was standing beside the chair.

Mr. Dickerson asked where the No Trespassing sign faced. Officer Nelson said it faces 6 Street, which is the south side of the building; he said the sign is also in the business’s window but is difficult to see. He added that he had never seen Mr. McElvy before, although the area is located within Officer Nelson’s District and he is also a resident there.

Mr. Jordan asked if Officer Nelson felt he could have handled the situation differently. Officer Nelson said at the time, with the information he had, he believed he handled the situation appropriately. He added that when he learned Mr. McElvy had a disability, he had not wanted to cause him any injury or bring any liability on the City. In hindsight, however, he stated that he would have taken Mr. McElvy to jail and had him cleared medically rather than reacted in sympathy to his disability.

Mr. Walters asked if Mr. McElvy had slapped the Officer’s hand away. Officer Nelson confirmed this.

Mr. McElvy said he had only cursed at the Officer after the Officer used objectionable language regarding the Americans with Disabilities Act. Officer Nelson said neither he nor Mr. McElvy had referred to the ADA during the incident.

Mr. McElvy continued that he was not near the person sitting in the parking lot when Officer Nelson arrived. He stated again that his feet were on the curb. Officer Nelson said both individuals were clearly trespassing on the business’s property, and he had issued verbal warnings to both of them on that day. He noted that Mr. McElvy had also breached the peace and engaged in offensive and disorderly conduct by his behavior during the incident.

Mr. Fling commented that an incident of this nature would commonly require more than one officer or a backup. He said there was nothing to make him believe Mr. McElvy, and calling Fire and Rescue did not make sense, as there was no injury. He stated the Board was wasting its time.

In a voice vote, the Board unanimously accepted the finding of Unfounded with regard to the unnecessary use of force.

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In a voice vote, the Board accepted the finding of Not Sustained with regard to the discourtesy by a vote of 7-1 (Mr. Jordan dissenting).

There being no further business to come before the Board at this time, the meeting was adjourned at 6:30 p.m.

[Minutes prepared by K. McGuire, Prototype, Inc.]