

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	May 31, 2019/10:00 P.M. & 10:45 P.M./7952 S. Rhodes Avenue & 7808 S. Halsted Street
Date/Time of COPA Notification:	July 29, 2019/4:45 P.M.
Involved Officer #1:	Bernard McDevitt, Star # 2954, Employee ID # [REDACTED] Date of Appointment: May 31, 1994, Rank: PO, Unit of Assignment: 022, DOB: [REDACTED] 1968, Male, White
Involved Officer #2:	Elise Padilla, Star # 976, Employee ID # [REDACTED] Date of Appointment: July 10, 1995, Rank: SGT, Unit of Assignment: 004, DOB: [REDACTED] 1962, Female, Hispanic
Involved Officer #3	Francisco Gonzalez, Star # 16782, Employee ID # [REDACTED] Date of Appointment: December 02, 2002, Rank: PO, Unit of Assignment: 701, DOB: [REDACTED] 1975, Male, Hispanic
Involved Officer #4	Carlos [REDACTED] Star # 12214, Employee ID # [REDACTED] Date of Appointment: September 11, 2000, Rank: PO, Unit of Assignment: 018, DOB: [REDACTED] 1961, Male, Black
Involved Individual #1:	[REDACTED] 1992, Male, Black
Case Type:	Circumvention of Criminal Prosecution

I. ALLEGATIONS

Officer	Allegation	Finding
Officer Bernard McDevitt	1. It is alleged by the Civilian Office of Police Accountability that on or about May 31, 2019 at approximately 10:45 P.M. at or near 7808 S. Halsted Street Officer Bernard McDevitt committed misconduct by failing to seek Aggravated Unlawful Use of a Weapon charges against [REDACTED]	Sustained
Sergeant Elise Padilla	1. It is alleged by the Civilian Office of Police Accountability that on or about May 31, 2019 at approximately 10:45 P.M. at or near 7808 S. Halsted Street Sergeant Elise Padilla committed misconduct by failing to seek Aggravated Unlawful Use of a Weapon charges against [REDACTED]	Sustained

Officer Francisco Gonzalez	1. It is alleged by [REDACTED] that on or about May 31, 2019 at approximately 10:00 P.M. at or near 7900 S. Rhodes Avenue Officer Francisco Gonzalez committed misconduct by searching [REDACTED] vehicle without justification.	Exonerated
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II. SUMMARY OF EVIDENCE

Complainant [REDACTED] (“Mr. [REDACTED]” alleged two Chicago police officers detained him without cause while he was inside a parked vehicle, in a handicapped parking spot, in front of a friend’s residence. Mr. [REDACTED] alleged one of the officers, Officer Francisco Gonzalez, searched his vehicle without probable cause or consent, recovering a handgun belonging to Mr. [REDACTED]. The officers arrested and transported Mr. [REDACTED] to the 006 District Station, where they met and conferred with their sergeant outside the station. Mr. [REDACTED] stated that although the officers and sergeant ultimately released him without charges after he informed them his father is a Chicago Police Officer—which they verified by telephoning his father—the officers nonetheless improperly seized his handgun without justification. COPA additionally alleged that, after the officers arrested Mr. [REDACTED] for a felony weapons violation, Officer McDevitt and Sergeant Padilla committed misconduct by failing to properly process and seek charges against Mr. [REDACTED] instead making the determination he would be released due to his father’s position as a police officer.

In reaching its factual findings, COPA reviewed Mr. [REDACTED] Complainant Interview,¹ the Interview of Officer Francisco Gonzalez,² the Interview of Officer Bernard McDevitt,³ the Interview of Sergeant Elise Padilla,⁴ the Interview of Witness Officer Carlos Cannon,⁵ Chicago Police Department Attendance & Assignment Reports,⁶ an Original Case Incident Report,⁷ a Case Supplementary Report,⁸ a “Number Plate Search Results” Report,⁹ GPS Reports,¹⁰ an Investigatory Stop Report documenting the incident in question,¹¹ all Investigatory Stop Reports authored by Officer McDevitt in the two years prior to the incident,¹² and documents relating to Mr. [REDACTED] firearm ownership and training.¹³ COPA finds that on May 31st, 2019, at approximately 10:00 P.M., Officers Bernard McDevitt and Francisco Gonzalez detained Mr. [REDACTED] as he sat alone in the driver’s seat of a vehicle that was illegally parked in a handicapped parking spot on the 7900 block of S. Rhodes Avenue. Both officers were assigned to gang teams,

¹ Attachment 1.

² Attachment 15.

³ Attachment 16.

⁴ Attachment 17.

⁵ Attachment 18.

⁶ Attachment 14.

⁷ Attachment 3.

⁸ Attachment 4.

⁹ Attachment 7.

¹⁰ Attachments 12-13.

¹¹ Attachment 5.

¹² Attachment 10.

¹³ Attachment 8.

so they were not required to wear Body Worn Cameras and did not record the incident. The vehicle Mr. ██████ occupied was registered to a ██████ of Evergreen Park, Illinois.

During the encounter, Officer McDevitt asked Mr. ██████ to produce a driver's license, but Mr. ██████ was unable to do so. Officer McDevitt asked Mr. ██████ to exit the vehicle, and Mr. ██████ complied. Officer Gonzalez, who was standing on the passenger's side of the vehicle, looked through the passenger's window and observed a bag on the rear passenger floorboard. Officer Gonzalez stated the bag was open, and a loaded .45 caliber handgun was partially visible inside the bag. The officers ran a name check on Mr. ██████ and determined he did not have an Illinois Concealed Carry License. Based on the foregoing, the officers took Mr. ██████ into custody and transported him from the scene of the stop to the 006 District Station, approximately two miles away.

While Mr. ██████ was in custody, he informed the officers his father is a Chicago Police Officer. Officer McDevitt informed his supervisor, Sergeant Elise Padilla, of Mr. ██████ claim, and the officers agreed to meet Sergeant Padilla outside the station. GPS Reports documenting the members' vehicle movements show Sergeant Padilla and the officers arrived at the station at 10:23 P.M.; the officers did not depart for another 34 minutes. Mr. ██████ stated that while he waited handcuffed in the back of the police vehicle, he was still under the impression he was going to jail. During that period, Mr. ██████ provided Sergeant Padilla with a telephone number he claimed belonged to his father, Officer Carlos Cannon ("Officer Cannon"). Sergeant Padilla called Officer ██████ and spoke with him over the phone. Sergeant Padilla asked Officer ██████ whether he was Mr. ██████ father, asked him to verify he was a police officer, and explained the situation to Officer Cannon. After Sergeant Padilla ended the phone call, she and Officer McDevitt decided to release Mr. ██████ rather than bring him into the station for processing and charges. Officer McDevitt told COPA the decision to release Mr. ██████ was his alone, based on Mr. ██████ polite and cooperative demeanor and Mr. ██████ claim that he was not the owner of the recovered firearm. Both Sergeant Padilla and Officer McDevitt denied that Officer Cannon's status as a police officer influenced their decision to release Mr. ██████

Officers McDevitt and Gonzalez drove Mr. ██████ back to the location of the initial stop, departing the station at 10:57 P.M. and arriving at 11:04 P.M. The officers issued Mr. ██████ a parking ticket and released him without further incident. Officer McDevitt's reports regarding the incident document that the weapon they found in Mr. ██████ possession bore Serial No. ██████ a March 2018 invoice from Darkside Armory/Contemporary Firearms L.L.C. confirms the .45 caliber handgun bearing Serial No. ██████ in fact belonged to Mr. ██████

III. ANALYSIS AND CONCLUSION

A. Officer Bernard McDevitt

COPA finds that Officer McDevitt failed to seek Aggravated Unlawful Use of a Weapon charges against Mr. ██████ Illinois Statute 720 ILCS 5/24-1.6(a) provides, in relevant part, "A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly: (1) Carries on or about his or her person or in any vehicle... any pistol, revolver, stun gun or taser or other firearm;... and (3) One of the following factors is present: ...the pistol, revolver, or handgun possessed was uncased, loaded, and immediately accessible at the time of the offense and

the person possessing the pistol, revolver, or handgun has not been issued a currently valid license under the Firearm Concealed Carry Act.”¹⁴ Officers McDevitt and Gonzalez found Mr. ██████ seated alone in the driver’s seat of a vehicle. Mr. ██████ possessed a .45 caliber handgun which was immediately accessible to him, within his reach, located on or around the rear passenger floorboard. The weapon was uncased and loaded, and Mr. ██████ did not have an Illinois Concealed Carry License. Therefore, based on the preponderance of the evidence, COPA finds Mr. ██████ committed the felony crime of Aggravated Unlawful Use of a Weapon.

In addition to these facts, COPA notes that Mr. ██████ was sitting in the driver’s seat of an illegally parked vehicle, registered under someone else’s name, in an area known to the officers for gang activity and narcotic sales. Mr. ██████ was unable to produce a driver’s license at Officer McDevitt’s request, and the officers’ PMDT search confirmed that Mr. ██████ did not have an Illinois Concealed Carry License for the firearm they found in his possession. Thus, the officers had probable cause to arrest Mr. ██████ for the felony of which he was factually in commission.

Officer McDevitt maintained that he always has discretion whether or not to arrest an individual for any crime. In this case, he decided not to arrest Mr. ██████ for multiple reasons, including because Mr. ██████ was “polite,” “clean cut,” and “cooperative,”¹⁵ claimed he was not the owner of the .45 caliber pistol, and denied knowing the firearm was in the vehicle, which Mr. ██████ stated he borrowed from a friend. However, the fact that Officer McDevitt denied he *intended* to arrest Mr. ██████ is not determinative of whether an arrest actually occurred; that determination requires an objective assessment of the police conduct,¹⁶ considering all of the circumstances surrounding an incident that are relevant to whether a subject would believe a seizure had occurred.¹⁷

Specifically, an arrest occurs when, by means of physical force or show of authority, a person’s freedom of movement is restrained,¹⁸ and the relevant inquiry is whether a reasonable, innocent person would have considered himself arrested or free to leave.¹⁹ Analysis of the question focuses on the totality of the circumstances and not on any one action taken by the police.²⁰ The oft-cited doctrinal case, *United States v. Mendenhall*, lists the following factors that may indicate an arrest: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) the touching of the person of the citizen; and (4) the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.²¹ Additionally, in *People v. Washington*, the Illinois Appellate Court elaborated on the criteria for determining whether a subject is arrested, including : (1) the time, place, length, mood and mode of the encounter between the subject and the police; (2) the number of officers present; (3) any indicia of formal arrest or restraint; (4) the officer’s intention; (5) the subject’s subjective belief or understanding; (6)

¹⁴ 720 ILCS 5/24-1.6(a). The statute goes on to provide that Aggravated Unlawful Use of a Weapon is Class 4 Felony, punishable by a sentence of imprisonment not less than one year and not more than three years. *Id.* at § 1.6(d); *see also* 720 ILCS 5/5-4.5-45(a).

¹⁵ Attachment 16 at 25:40 minutes.

¹⁶ *People v. White*, 221 Ill.2d 1, 21-22 (2006).

¹⁷ *People v. Myrick*, 274 Ill.App.3d 983 (1995).

¹⁸ *People v. Melock*, 149 Ill.2d 423 (1992).

¹⁹ *People v. Williams*, 164 Ill.2d 1 (1994).

²⁰ *People v. Myrick*, 274 Ill.App.3d 983 (1995).

²¹ *United States v. Mendenhall*, 446 U.S. 544 (1980).

whether the subject was told that he could refuse to go with the police; (7) whether the subject was transported in a police car; (8) whether the subject was told that he was free to leave; (9) whether the subject was told that he was under arrest; (10) the language used by the officers.²²

In this case, three Department members were involved in the investigation and custody of Mr. ██████. Officers Gonzalez and McDevitt physically restrained Mr. ██████ during the stop. Upon finding his firearm, the officers transported Mr. ██████ to the 006 District Station, handcuffed in the back of their police vehicle. Neither of the involved officers advised Mr. ██████ he could refuse to go with them to the station. Mr. ██████ remained handcuffed in the back of the vehicle for approximately forty minutes, during which time he was still under the impression he was going to jail. All available evidence indicates Mr. ██████ custody and transport were compelled and involuntary. Therefore, based on the totality of the circumstances, COPA finds that a reasonable, innocent person in Mr. ██████ position would have believed himself arrested, and not free to leave. The preponderance of the evidence shows that the officers did in fact arrest Mr. ██████ based on the crime he factually committed.

Once an officer makes an arrest, specific Department policies and requirements are triggered. General Order G06-01-01, Field Arrest Procedures, directs arresting officers to immediately transport an arrestee to the appropriate Department facility for initial processing.²³ General Order G06-01, Processing Persons Under Departmental Control, requires Department members to “observe, uphold, and enforce the law fairly, impartially, and without bias.”²⁴ It further provides, “Arrested persons will be booked, charged, and made eligible for bond...without unnecessary or unreasonable delay. Investigation or interrogation of an arrestee will not delay the booking process.”²⁵ Finally, Special Order S06-01 requires arresting officers to complete an arrest report and personally present the report to the on-duty station supervisor for approval.²⁶ The station supervisor is responsible for making the final determination whether a person should be released without charging.²⁷ These directives make clear that once an officer makes an arrest, the officer is required to transport the arrestee to the District Station, immediately and without unnecessary delay, for booking and processing, and is further required to submit an arrest report to the station supervisor, who has the sole authority to determine whether an arrestee should be released without charging.

Following the arrest in this case, the officers did not complete their transport of Mr. ██████. Instead, they stopped outside the 006 District Station to confer with Sergeant Padilla, and she continued the investigation by calling Mr. ██████ father. The GPS data shows Sergeant Padilla and the officers spent approximately 34 minutes outside of the station, with another seven minutes elapsing before the officers returned Mr. ██████ to the site of the initial encounter. This was a substantial delay, and the officers’ failure to complete Mr. ██████ transport and immediately commence processing violated General Orders G06-01 and G06-01-01. Additionally, Officer McDevitt’s decision to release Mr. ██████ without charging was a violation of Special

²² *People v. Washington*, 363 Ill.App.3d (2006).

²³ G06-01-01(II)(B) – (C)(1).

²⁴ G06-01(II)(A)(1).

²⁵ G06-01(II)(A)(3).

²⁶ S06-01(II)(A)(2), (9).

²⁷ S06-01(II)(B)(8)(a).

Order S06-01, which assigns that authority solely to the station supervisor in charge of detention facilities. Upon making his arrest, Officer McDevitt was required to seek charges against Mr. [REDACTED] for the crime committed—Aggravated Unlawful Use of a Weapon. Officer McDevitt's failure to complete transport, commence processing, and seek charges constitute a failure to meet that requirement. Thus, Officer McDevitt violated Rule 3,²⁸ Rule 5,²⁹ and Rule 6³⁰ of the Rules and Regulations of the Chicago Police Department.

B. Sergeant Elise Padilla

COPA finds that Sergeant Elise Padilla failed to seek Aggravated Unlawful Use of a Weapon charges against Mr. [REDACTED]. COPA's analysis of Sergeant Padilla's involvement in this incident arises from the same Department directives discussed in the above analysis of Officer McDevitt's conduct. When Sergeant Padilla met the officers outside the station, they informed her why they took Mr. [REDACTED] into police custody; thus, she also shared the responsibility for ensuring he was appropriately booked and charged. Despite Officer McDevitt's claim that he alone decided to release Mr. [REDACTED] that decision belonged, at least in part, to Sergeant Padilla. Had the sergeant disagreed with Officer McDevitt's decision, she would have been in a position to stop him from releasing Mr. [REDACTED]. Instead, Sergeant Padilla placed a phone call to Mr. [REDACTED] father, Officer [REDACTED] and then inserted herself into the decision to release Mr. [REDACTED] without completing transport, processing, booking, or submitting Mr. [REDACTED] to the station supervisor for charging. COPA finds that Sergeant Padilla's failure to seek charges for Aggravated Unlawful Use of a Weapon charges against Mr. [REDACTED] violated Rules 3, 5, and 6 of the Rules and Regulations of the Chicago Police Department.

C. Officer Francisco Gonzalez

COPA finds the allegation that Officer Francisco Gonzalez searched Mr. [REDACTED] vehicle without justification is exonerated. The officers encountered Mr. [REDACTED] at 10:00 P.M. at night, in a high-crime area, illegally parked in a handicapped parking spot. The vehicle Mr. [REDACTED] was in was not registered to him, but to a Ms. [REDACTED]. Mr. [REDACTED] was unable to produce a driver's license, which is itself an arrestable offense. For all of these reasons, Officer Gonzalez had probable cause to search the vehicle and the allegation against him is exonerated.

IV. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

A. Officer Bernard McDevitt

i. Complimentary and Disciplinary History

COPA reviewed Officer McDevitt's complimentary, disciplinary, and training histories in considering discipline for this sustained finding. No complaints are registered with the Chicago Police Department against Officer McDevitt, nor has the officer received disciplinary action in the Department.

²⁸ Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

²⁹ Rule 5: Failure to perform any duty.

³⁰ Rule 6: Disobedience of an order or directive, whether written or oral.

1. Allegation No. 1

COPA has found that Officer Bernard McDevitt violated Rules 3, 5, and 6 when he failed to seek charges against Mr. [REDACTED] for Aggravated Unlawful Use of a Weapon. Though officers may have some discretion in deciding whether a subject should be arrested for a given crime, once an arrest is made, strict requirements follow. Officer McDevitt's failure to comply with these requirements is contrary to the Department's policies and goals—specifically, the goals of criminally charging those found in the commission of felonies, avoiding the real and perceived impropriety of engaging in the biased enforcement of laws vis-à-vis police officers and their family members, and maintaining good order and discipline in the Department such that any given Departmental authority may only be exercised by those officers to whom such authority is duly assigned. Considering Officer McDevitt's record of service and the serious nature of this misconduct, COPA finds that a 10-day suspension is the appropriate penalty to impose for this sustained allegation.

B. Sergeant Elise Padilla

i. Complimentary and Disciplinary History

COPA reviewed Sergeant Padilla's complimentary, disciplinary, and training histories in considering discipline for this sustained finding. No complaints are registered with the Chicago Police Department against Sergeant Padilla, nor has the sergeant received disciplinary action in the Department.

1. Allegation No. 1

COPA has found that Sergeant Elise Padilla violated Rules 3, 5, and 6 when she failed to seek charges against Mr. [REDACTED] for Aggravated Unlawful Use of a Weapon. Though police sergeants may have some discretion in deciding whether a subject should be arrested for a given crime, once an arrest is made, strict requirements follow. Pursuant to S06-01, only a station supervisor in charge of detention facilities may determine an arrestee can be released without charging. Sergeant Padilla's failure to personally comply with this directive, and to ensure a subordinate's compliance, is contrary to the Department's policies and goals. Considering Sergeant Padilla's record of service and the serious nature of this misconduct, COPA finds that a 10-day suspension is the appropriate penalty to impose for this sustained allegation.

Approved:



January 26, 2021

Andrea Kersten
Chief of Investigative Operations

Date

Appendix A

Assigned Investigative Staff

Squad#:	Six
Investigator:	Daniel Thetford
Supervising Investigator:	Steffany Hreno ³¹
Chief of Investigative Operations:	Andrea Kersten

³¹ Former Deputy Chief James Murphy-Aguilu supervised this investigation until December 2020.