



**OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS**

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**POLICE INVOLVED DEATH DECISION MEMORANDUM
DECEDENT: MICHAEL SHELBY**

I. OVERVIEW

This matter involved the fatal shooting of Michael Shelby by Riverdale Police Officer David Gutierrez #151. The Illinois State Police's Public Integrity Task Force conducted an investigation into Shelby's death. During the course of the investigation, investigators interviewed civilian and law enforcement witnesses and reviewed 911 calls, photographs of the scene, police reports, medical records, the Cook County Medical Examiner Post-Mortem Report, the results of forensic examinations, third-party video surveillance, and Body-Worn Camera (BWC) footage.

The Office of the Cook County State's Attorney, as the agency responsible for making criminal charging decisions under Illinois law for incidents that occur in Cook County, reviewed the evidence collected during the investigation to determine whether there was a good faith basis for filing criminal charges. After a thorough review, the Office has concluded that the evidence is insufficient to support criminal charges against Riverdale Police Officer David Gutierrez.

II. STATEMENT OF FACTS

The evidence presented at any criminal proceeding resulting from this incident would show as follows: On June 3, 2020, at approximately 8:24 pm, Riverdale Police Officer David

Gutierrez was dispatched to the area of 665 W. 144th Street in Riverdale, Illinois for a report of gunfire heard inside of a residence. Upon arrival, Officer Gutierrez went to a residence located at 665 W. 144th Street and observed a window screen laying on the ground. The broken window appeared to lead into the basement of the residence. As Officer Gutierrez approached the window, he heard a verbal altercation between a male and female now known to be Michael Shelby and "SC". Officer Gutierrez announced his office and three seconds later a single gunshot rang out followed by a female screaming, "Oh my God, he shot me...he shot me!" Officer Gutierrez announced a second time, "Riverdale police, come out!" Officer Gutierrez could see that SC was bleeding from her neck. She begged Officer Gutierrez for help while trying to climb out of the basement window. As SC attempted to climb out of the window, Shelby grabbed her and pulled her back into the basement. SC yelled, "He's pulling me in... please help me!" Officer Gutierrez knelt next to the window, and fired two consecutive rounds through the window, fatally striking Michael Shelby. SC held a towel to her neck as she ran out of the residence. Officers learned that a second female, identified as "NG", was also in the home. NG hid in the house until she heard officers order her out of the house. She exited through the rear door shortly after the shooting, with no major injuries. Shelby was discovered in the basement lying on his back with a gunshot wound to the head and a black handgun located near his feet. Shelby was subsequently pronounced dead at the scene. The Cook County Medical Examiner determined that the cause of death was a single gunshot to the head, and the manner of death was homicide.

A handgun was recovered from the basement floor near Shelby's feet and was sent to the Illinois State Police Crime Laboratory where it was examined and found to be operational. The handgun was also examined for fingerprints however no latent prints were suitable for examination. DNA swabs of the handgun were collected for comparison to buccal swabs collected from Shelby during the post-mortem examination. Examination of the DNA swabs were found to be unsuitable for comparison.

Two fired 45 caliber casings located outside the residence were analyzed and determined to have been fired from Officer Gutierrez's duty weapon. Inside the residence, officers recovered one (1) 9 mm cartridge casing from the floor of the basement bedroom and one (1)

fired projectile recovered underneath a wooden dresser of the basement bedroom. They were tested and determined to have been fired from the handgun recovered near Shelby's feet.

Ballistic comparison was also conducted between Officer Gutierrez's gun and a fired bullet fragment recovered from Shelby's head. The analysis confirmed that the fragment was fired from Officer Gutierrez's gun.

III. LEGAL STANDARD

In making any charging decision, the Office of the Cook County State's Attorney is bound by the Illinois Criminal Code in effect at the time of the incident. The Illinois Use of Force in Defense of Person statute provided in pertinent part:

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

720 ILCS 5/7-1(a) (West 2018).

The statute regarding an officer's use of force provided in pertinent part:

A peace officer . . . need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to affect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he reasonably believes both that: (1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and (2) the person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

720 ILCS 5/7-5(a) (West 2018).

IV. ANALYSIS AND CONCLUSION

A criminal prosecution for either first- or second-degree murder would require proof beyond a reasonable doubt that the involved officer was not legally justified in using deadly force against Shelby. In other words, a judge or a jury would have to find that Officer Gutierrez did not reasonably believe that SC was in imminent danger of great bodily harm or death. In this case, however, the evidence shows that Officer Gutierrez reasonably used deadly force in defense of SC.

When reviewing the evidence and the potential issues involved in making a charging decision, the totality of the circumstances surrounding the incident and the applicable legal standards must be considered to guide the determination of whether a rational trier of fact would find Officer Gutierrez's use of deadly force to be reasonable and justified. Under the current case law, the trier of fact could reasonably conclude that the evidence demonstrates that Officer Gutierrez reasonably believed SC to be in apparent danger of losing her life or suffering great bodily injury. Upon Officer Gutierrez's initial approach at the basement window, he heard Shelby and SC engage in a verbal altercation and announced his office. Three seconds later, Officer Gutierrez heard a single gunshot, followed by SC screaming, "Oh my God, he shot me...he shot me!" As Officer Gutierrez announced his office again, SC asked him for help and tried to climb out of the window while bleeding from her neck. While speaking to Officer Gutierrez, Shelby grabbed SC and proceeded to pull SC back into the basement. SC started screaming, "He's pulling me in, He's pulling me in." Officer Gutierrez reasonably believed that Shelby was taking SC hostage and SC was in imminent danger of additional great bodily harm or death. Officer Gutierrez then fired two shots into the window at Shelby and saw him drop to the ground. Officer Gutierrez remained outside by the basement window while officers entered the home and secured the scene. Shelby was found lying on the floor next to a black handgun, which was on his right side on the floor.

Based on the evidence reviewed in this matter and the applicable legal standards, the evidence is insufficient to support the filing of criminal charges as the use of deadly force by Officer Gutierrez against Shelby was reasonable under the totality of the circumstances. Therefore, the Office is not filing criminal charges in this case.

Pursuant to policies and legislation enacted at the urging of State's Attorney Foxx, after making its declination determination, the State's Attorney's Office referred the review of the case to the Office of the Illinois State's Attorneys Appellate Prosecutor (ILSAAP) for an additional review. ILSAAP has reviewed the case and has concurred that no criminal charges are appropriate.

This conclusion is based entirely on the relevant criminal laws and standards of proof in Illinois and does not limit administrative action by the Riverdale Police Department or civil actions where less stringent laws, rules, and legal standards of proof apply. The Office expresses no opinion regarding the propriety or likelihood of success of any such actions.