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The Chicago Police Department's Murder of Adam Toledo Was Not Justifiable Self-Defense

Cruz Rodriguez

Trigger Warning: This article contains graphic descriptions of the shooting and killing of Adam Toledo, including a detailed description of the body worn camera of the shooting officer.

The shooting and killing of 13-year-old Adam Toledo by a Chicago Police Department (CPD) officer was not justifiable self-defense. The killing of a 13-year-old child by a police officer is not something we should be comfortable with or something we should permit. While legal justifications may exist, it does not serve as a moral justification, nor does it take into account the social conditions under which a crime like this can be committed by a CPD officer. In these discussions, we tend to forget to experience empathy and extend compassion to the family, friends, and community who experienced this traumatic loss. We are quick to ask: what was a 13-year-old doing outside so late at night? Where were his parents? Was he just another unfortunate young man lost to a gang? These questions only diminish the issue, and do not take into consideration the recent demonstrations across the country calling for a change in how policing is conducted in communities across the United States; for which there is evidence that indicates policing is racist and biased.¹ With these considerations, it is clear that CPD, without due process of law, murdered a 13-year-old child.

On March 29, 2021 at around 2:30 AM, CPD officers responded to a gunshot detection system and emergency calls at the 2300 block of South Sawyer Ave in the Little Village neighborhood.² The ShotSpotter alerts are from an audio gunfire detection system that deploys CPD officers into an area where there is apparent gunfire.³ When they officers responded to the alleged shoot-

¹ Wenei Philimon, *Not just George Floyd: Police departments have 400-year history of racism*, USA Today (June 07, 2020), <https://www.usatoday.com/story/news/nation/2020/06/07/black-lives-matters-police-departments-have-long-history-racism/3128167001/>

² Rachel Treisman, Vanessa Romo, Barbara Campbell, *Chicago Releases Video Showing Fatal Police Shooting of 13-Year-Old Adam Toledo*, National Public Radio (April 15, 2021), <https://www.npr.org/2021/04/15/987718420/chicago-releases-video-showing-fatal-police-shooting-of-13-year-old-adam-toledo>.

³ Chuck Goudie, Barb Markoff, Christine Tressel, Ross Weidner and Jonathan Fagg, *No crimes reported by Chicago police after 86% of ShotSpotter gunfire alerts*, ABC 7 Eyewitness News (May 03, 2021), <https://abc7chicago.com/chicago-police-cpd-shotspotter-news/10575861/>

ing area, they saw two suspects running into a nearby alley, one with a handgun.⁴ Immediately, the officers got out of their CPD squad car and pursued them on foot.⁵ Seconds later, Adam Toledo is fatally shot in the chest by officer Eric Stillman.⁶

More context of the events that unfolded in those twenty-six seconds can be found in the CPD body worn cameras (BWC) and third-party recordings.⁷ In officer Stillman's BWC, he is seen quickly getting out of his car.⁸ Six seconds later he apprehends one of the suspects, who barely ran (BWC 1 – Shooting Officer, Timestamps 1:50 – 1:52).⁹ Officer Stillman continues his pursuit of Adam Toledo for seven seconds, who had already ran a further distance (BWC 1 – Shooting Officer, Timestamps 1:53 – 1:58).¹⁰ Throughout his pursuit, we only begin to hear what is recorded after the audio recording is turned on (BWC 1 – Shooting Officer, Timestamp 1:53).¹¹ Officer Stillman yells “Police! Stop! Stop-right fucking now!” (BWC 1 – Shooting Officer, Timestamps 1:53 – 2:02).¹² At the end of the alley, Officer Stillman continues to yell “Hands! Show me your fucking hands! Drop it-” (BWC 1 – Shooting Officer, Timestamps 2:03 – 2:04).¹³ Half a second later, Toledo turns around while raising his empty hands and is fatally shot in the chest (BWC 1 – Shooting Officer Timestamp 2:05).¹⁴ A third-party camera shows Adam Toledo reaching the end of the alley where he quickly removes an object from his clothing and tosses it onto the ground behind a fence prior to being shot (3rd Party Camera 1, Timestamps 3:48 – 3:50).¹⁵

The information the public received from city officials and CPD was confusing and suspicious about what had occurred and who the shooting victim was. In a tweet three hours after the shooting, CPD spokesman Tom Ahern called the incident an “armed confrontation” between an officer and an armed

⁴ Treisman, *supra* note 2.

⁵ *Id.*

⁶ *Id.*

⁷ Body Worn Camera Video: *BWC 1—Shooting Officer*, Civilian Office of Police Accountability (April 15, 2021), <https://www.chicagocopa.org/case/2021-1112/>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Third Party Video: *3rd Party 1—Shows OIS*, Civilian Office of Police Accountability (April 15, 2021), <https://www.chicagocopa.org/case/2021-1112/>.

subject.¹⁶ In an official press release twelve hours later, CPD removed the word “armed” and simply described what occurred as a “confrontation.”¹⁷ On April 01, 2021, CPD identified the shooting victim as 13-year old Adam Toledo.¹⁸ On April 05, 2021, Chicago’s Mayor Lori E. Lightfoot, along with CPD Superintendent David Brown, held a news conference where they stated Adam Toledo had a gun but would not go into the details as to whether or not shots were fired at the police officers.¹⁹ Additionally, they made a statement to “. . .correct the hurtful and false mischaracterization of Adam as a lonely child of the street who had no one to turn to.”²⁰ They state “This is simply not true.”²¹ On April 10, 2021, a state prosecutor publicly stated during the bond hearing for Ruben Roman that Adam Toledo was holding a gun when Officer Stillman shot at him.²²

On April 15, 2021, Mayor Lightfoot had begun to change her narrative about Adam Toledo, at a news conference she stated he was a “child who was in contact with an adult who had a gun.”²³ And confirmed that Adam Toledo never shot at officer Stillman, she stated “I’ve seen no evidence whatsoever that Adam Toledo shot at the police.”²⁴ That same day multiple videos were released to the public by the Civilian Office of Police Accountability (COPA), which gave the public video recordings and documents of what occurred.²⁵ In these videos of the foot pursuit, a viewer cannot see a gun in Adam Toledo’s hand.²⁶ Adam Toledo complied with officer Stillman’s orders, he took a pause

¹⁶ Grace Hauck, *Evolution of a city’s account of a killing: How Chicago’s narrative changed in the fatal police shooting of Adam Toledo*, USA Today (April 16, 2021), <https://www.usatoday.com/story/news/nation/2021/04/16/adam-toledo-police-shooting-how-chicagos-narrative-changed/7260911002/>.

¹⁷ *Id.*

¹⁸ Tara Molina, CBS Chicago (April 01, 2021), *Person Shot And Killed By Police In Little Village Identified As 13-Year-Old Adam Toledo*, <https://chicago.cbslocal.com/2021/04/01/adam-toledo-little-village-fatal-police-shooting-armed-confrontation/>.

¹⁹ Hauck, *supra* note 16.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Noel King, *Attorney For Adam Toledo’s Family: ‘Adam Died Because He Complied,’* National Public Radio (April 19, 2021), <https://www.npr.org/2021/04/19/988685389/attorney-for-adam-toledos-family-adam-died-because-he-complied>.

by the fence, dropped something out of his clothing, and turned around with his hands up.²⁷

The shooting of Adam Toledo sparked many discussions about whether the shooting was justifiable self-defense or not. Some argued that the shooting was justifiable self-defense, such as *Sun-Times* columnist Mark Brown.²⁸ Brown stated that while the shooting was grievous and a fatal error, Officer Stillman was justified in believing he needed to defend himself by using lethal force.²⁹ He reaches this conclusion by what he describes as applying the human standard rather than the legal one, which is to “walk a minute in the other man’s shoes.”³⁰ He proposed questions to readers: what would they do if they were in the police officer’s position?³¹ After responding to a ShotSpotter alert and then pursuing a person you saw with a gun down a dark alley?³² These readers are able to view in the video recordings that the alley was well lit and the officer responded very quickly when he shot. Brown also suggests that as a society, we expect police officers to have this responsibility, to respond quickly to stop gunfire.³³ This is why we allow them to have guns, to protect themselves.³⁴ However, Little Village community members have expressed after the shooting they do not feel safe with CPD officers with guns in their neighborhood.³⁵

Another perspective is reflected in an article written by *Chicago Tribune* columnist Eric Zorn.³⁶ Prior to the release of the videos by COPA, Zorn argued that we needed to wait for the facts to come out before turning Adam Toledo into a martyr or an innocent 13-year-old.³⁷ He stated that we needed to stop romantizing and infantilizing 13-year-olds because they are capable of

²⁷ *Id.*

²⁸ Mark Brown, *Chicago cop who shot Adam Toledo is no murderer*, *Sun-Times* (April 23, 2021), <https://chicago.suntimes.com/2021/4/23/22399536/adam-toledo-shooting-chicago-police-department-little-village-farragut-high-ruben-roman>

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Hugo Balta, *Many In Little Village Live In Fear*, *The Chicago Reporter* (April 19, 2021), <https://www.chicagoreporter.com/many-in-little-village-live-in-fear/>

³⁶ Eric Zorn, *Column: Let’s wait before turning slain 13-year-old Adam Toledo into a martyr*, *Chicago Tribune* (April 06, 2021), <https://www.chicagotribune.com/columns/eric-zorn/ct-column-adam-toledo-chicago-police-protests-martyr-zorn-20210406-lp7kbnzdtzcc7iyjanbngfgb2q-story.html>

³⁷ *Id.*

doing harm.³⁸ However, that rhetoric suggests that 13-year-old children and adults are comparable in terms of capability of committing crime and making rational judgements.³⁹ This only affirms the problematic criminal justice system that already treats juveniles as adults.⁴⁰ Zorn also suggests that the shooting of a 13-year-old child may have been legally justifiable self-defense, thus permissible.⁴¹

The legal doctrine of justifiable self-defense in a police shooting of a civilian stems from a 1985 decision by the Supreme Court of the United States in *Tennessee v. Garner*.⁴² The Court held that a police officer could shoot only if they had probable cause to believe that a fleeing suspect posed a significant threat of bodily harm or death to an officer or others.⁴³ While the holding set a clear standard for police officers of when lethal force could be used, the standard was expanded in a 1989 decision made by the Supreme Court in *Graham v. Connor*.⁴⁴ While this case did not address lethal force, the Court held that a police officer's actions must only meet the standard of what a reasonable officer might do to be legal.⁴⁵ In the majority opinion, Chief Justice William H. Rehnquist wrote "the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain and rapidly evolving — about the amount of force that is necessary in a particular situation."⁴⁶ The standard of reasonableness set in *Graham* for split-second judgements made by police officers is now used by state legislatures, judges, and police departments to justify police interactions with civilians.⁴⁷

In the case of Adam Toledo, the shooting was not justifiable self-defense. Officer Stillman did not respond with the appropriate force in order to apprehend Adam Toledo. In the Tactical Response Report, within the box "Subject's

³⁸ *Id.*

³⁹ Cruz Rodriguez, *Letters: Eric Zorn's column about Adam Toledo creates more grief in a community already in mourning*, Chicago Tribune (April 08, 2021) <https://www.chicagotribune.com/opinion/letters/ct-letters-vp-040921-20210408-jykpfa3j35gbzbrhw16ljf5hgy-story.html>.

⁴⁰ *Id.*

⁴¹ Zorn, *supra* note 36.

⁴² David D. Kirkpatrick, *Split-Second Decisions: How a Supreme Court Case Shaped Modern Policing*, The New York Times (April 25, 2021), <https://www.nytimes.com/2021/04/25/us/police-use-of-force.html>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

Actions,” Officer Stillman indicated that Adam Toledo did not follow verbal direction, fled, was an imminent threat of battery with weapon, and used force likely to cause death or great bodily harm.⁴⁸

| | | | | |
|--|--|--|---|---|
| <input type="checkbox"/> DNA <input type="checkbox"/> UNK SUBJECTS ACTIONS (Check all that apply) | <input checked="" type="checkbox"/> DID NOT FOLLOW VERBAL DIRECTION | <input type="checkbox"/> PHYSICAL ATTACK WITHOUT WEAPON. (SPECIFY) | <input type="checkbox"/> THROWN OBJECT (DESCRIBE) | |
| | <input type="checkbox"/> UNABLE TO UNDERSTAND VERBAL DIRECTION | <input type="checkbox"/> HAND/ARM/ELBOW STRIKE | | |
| | <input type="checkbox"/> VERBAL THREATS | <input type="checkbox"/> KNEE/LEG STRIKE | <input checked="" type="checkbox"/> IMMINENT THREAT OF BATTERY WITH WEAPON | |
| | <input type="checkbox"/> STIFFENED (DEAD WEIGHT) | <input type="checkbox"/> MOUTH/TEETH/SPIT | <input type="checkbox"/> ATTEMPT TO OBTAIN MEMBER'S WEAPON | |
| | <input type="checkbox"/> PULLED AWAY | <input type="checkbox"/> PUSH/SHOVE/PULL | <input type="checkbox"/> PHYSICAL ATTACK WITH WEAPON | |
| | <input checked="" type="checkbox"/> FLED | <input type="checkbox"/> GRAB/HOLD/RESTRAIN | <input checked="" type="checkbox"/> USED FORCE LIKELY TO CAUSE DEATH OR GREAT BODILY HARM | |
| | <input type="checkbox"/> IMMINENT THREAT OF BATTERY - NO WEAPON | <input type="checkbox"/> WRESTLE/GRAPPLE | <input type="checkbox"/> OTHER (DESCRIBE) | |
| | <input type="checkbox"/> PHYSICAL OBSTRUCTION | <input type="checkbox"/> OTHER (DESCRIBE) | | |
| | DID THE SUBJECT COMMIT AN ASSAULT OR BATTERY AGAINST THE INVOLVED MEMBER PERFORMING A POLICE FUNCTION? | | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES | SUBJECT ACTIVE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |
| | | | Drug-Related? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | Gang-Related? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |

(Tactical Response Report/Chicago Police Department # 2021-00729)⁴⁹

Because of this conduct, within the box “Member’s Response,” Officer Stillman indicates he shot at Adam Toledo because it was in defense of self, in defense of a department member, was to overcome resistance or aggression, and because the subject was with a weapon.⁵⁰

| | | | | |
|---|--|--|---|--|
| <input type="checkbox"/> DNA <input type="checkbox"/> UNK MEMBER'S RESPONSE (Check all that apply) | REASON FOR RESPONSE? <input checked="" type="checkbox"/> Defense of Self <input type="checkbox"/> Defense of Member of Public <input type="checkbox"/> Defense of Department Member | <input type="checkbox"/> Fleeing Subject <input checked="" type="checkbox"/> Subject Armed with Weapon <input type="checkbox"/> Other (Describe) | <input type="checkbox"/> Overlaid by Supervisor Name: _____ Star No. _____ | |
| | FORCE MITIGATION EFFORTS | | CONTROL TACTICS | |
| | <input checked="" type="checkbox"/> MEMBER PRESENCE <input type="checkbox"/> ZONE OF SAFETY <input type="checkbox"/> VERBAL DIRECTION/CONTROL TECHNIQUE | <input type="checkbox"/> MOVEMENT/AVOID ATTACK <input type="checkbox"/> SPECIALIZED UNITS | <input checked="" type="checkbox"/> TACTICAL POSITIONING <input type="checkbox"/> NONE <input type="checkbox"/> ADDITIONAL UNIT MEMBERS | <input type="checkbox"/> ESCORT HOLDS <input type="checkbox"/> WRISTLOCK <input type="checkbox"/> ARMSBAR |
| | RESPONSE WITHOUT WEAPONS | | RESPONSE WITH WEAPON USE | |
| | <input type="checkbox"/> OPEN HAND STRIKE <input type="checkbox"/> TAKE DOWN <input type="checkbox"/> ELBOW STRIKE <input type="checkbox"/> CLOSED HAND STRIKE/PUNCH <input type="checkbox"/> KICK STRIKE | <input type="checkbox"/> KICKS <input type="checkbox"/> PUSH/PHYSICAL REDIRECTION <input type="checkbox"/> OTHER | <input type="checkbox"/> OC/CHEMICAL WEAPON <input type="checkbox"/> TASER <input type="checkbox"/> OC/CHEMICAL WEAPON (w/ AUTHORIZATION) <input type="checkbox"/> CANINE <input type="checkbox"/> IRAD w/ AUTHORIZATION* | <input type="checkbox"/> LESS LETHAL SHOTGUN (DESCRIBE BELOW) <input type="checkbox"/> REVOLVER <input checked="" type="checkbox"/> SEMI-AUTO PISTOL <input type="checkbox"/> RIFLE <input type="checkbox"/> SHOTGUN <input type="checkbox"/> OTHER IMPACT MUNITIONS (DESCRIBE BELOW) <input type="checkbox"/> OTHER |
| | AUTHORIZED BY (NAME) _____ RANK _____ STAR NO. _____ UNIT NO. _____ | | | |
| | WAS ANY REPORTABLE FORCE USED AGAINST THE SUBJECT WHILE HANDCUFFED OR OTHERWISE IN PHYSICAL RESTRAINTS? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES IF YES, DESCRIBE SUBJECT'S ACTIONS AND MEMBER'S RESPONSE IN THE NARRATIVE SECTION. | | | INVOLVED IN A PURSUIT? <input type="checkbox"/> NO <input checked="" type="checkbox"/> FOOT <input type="checkbox"/> VEHICLE <input type="checkbox"/> OTHER |

(Tactical Response Report/Chicago Police Department # 2021-00729)⁵¹

What is seen in the BWC videos of Officer Stillman tells a different story. While Adam Toledo did flee, he ultimately complied with verbal orders. He stopped running, he dropped what we now know to be a gun, and he raised his hands to Officer Stillman. Adam Toledo did not present an imminent threat of

⁴⁸ Eric Stillman, *Tactical Response Report/Chicago Police Department*, Chicago COPA (March 29, 2021), https://www.chicagocopa.org/wp-content/uploads/2021/04/PO-Stillman-TRR_REDACTED.pdf.

⁴⁹ Stillman, *supra* note 48.

⁵⁰ *Id.*

⁵¹ *Id.*

battery with a weapon because at no point in the twenty-six seconds of the pursuit does he point the gun at Officer Stillman or others. When he turned to the officer with his hands raised, he no longer had the handgun in his possession.

The CPD De-Escalation, Response to Resistance, and Use of Force Policy states that “[t]he Department’s highest priority is the sanctity of human life. The concept of the sanctity of human life is the belief that all human beings are to be perceived and treated as persons of inherent worth and dignity. . .”⁵² CPD Officers are authorized to use deadly force when there is an objectively reasonable belief when there is an imminent threat.⁵³ The CPD Policy defines an imminent threat to be objectively reasonable when “the person’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; *and* the person has the means or instruments to cause death or great bodily harm; *and* the person has the opportunity and ability to cause death or great bodily harm.”⁵⁴ In addition, the CPD Policy prohibits officers from using deadly force “on a fleeing person unless the person poses an imminent threat. . .”⁵⁵

Officer Stillman indicated on the Tactical Response Report that Adam Toledo was armed with a semi-auto pistol.⁵⁶ Did Officer Stillman see that Adam Toledo was in possession of a gun when he arrived? Or was that an assumption that was based on the reports of shots fired in the area and it just happened to be that Adam Toledo was carrying a gun? Or was that fact filled in after Officer Stillman reviewed the BWC recordings before completing the report, as indicated on the TRR.⁵⁷ Answers to those questions provide insight to the Officer’s state of mind, however, it is still difficult to come to the conclusion that the shooting was justified.

Adam Toledo’s actions still did not meet the definition of being an imminent threat to authorize Officer Stillman to use deadly force. Adam Toledo *was* carrying an instrument that had the potential to cause death or great bodily harm. The object that Adam Toledo removed from his clothing was a handgun. However, Adam Toledo’s actions in turning around with his hands raised

⁵² *De-Escalation, Response to Resistance, and Use of Force Policy*, Chicago Police Department (December 31, 2020), <http://directives.chicagopolice.org/directives/data/a7a57be2-128ff3f0-ae912-8fff-44306f3da7b28a19.html>

⁵³ *Id.*

⁵⁴ Stillman, *supra* note 48.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

does not constitute an action that is immediately likely to cause death or great bodily harm. Nor did Adam Toledo have the opportunity or ability to cause death or great bodily harm. He threw the gun onto the ground and complied with Officer Stillman's verbal orders.

The shooting of Adam Toledo is still currently under investigation by the Civilian Office for Police Accountability. Officer Stillman has been placed on administrative duties for 30 days. However, with the information that has been released to the public, it can be determined the shooting was not justifiable self-defense under case law and it was not in compliance with CPD's policy on use of deadly force.

Aside from these arguments on whether the shooting was justified or not, we need to remember who Adam Toledo was. He was a 13-year-old seventh grade student at Gary Elementary School. He was a son to a parent, a brother to sibling, a cousin and nephew to a family, and a friend to others.⁵⁸ He enjoyed playing with Legos and cracking jokes to make others laugh.⁵⁹ He was a young community member whom we should have protected and cared for. He was entitled to the opportunity to enjoy the constitutional right of innocent until proven guilty by a judge or jury. Importantly, as a child, he deserved an opportunity to make mistakes and to learn from them, without criminalization and the threat of police violence and incarceration. He deserved many opportunities, even if that opportunity was to just to live.

*Since 1940, Adam Toledo is the 41st child under the age of 16-years-old to be killed by the Chicago Police Department.*⁶⁰

⁵⁸ Elizabeth Toledo, *Adam's Memorial Fund*, GoFundMe (April 1, 2021), <https://www.gofundme.com/f/uhhas-adams-memorial-fund>.

⁵⁹ *Id.*

⁶⁰ Alex Stein, *A Timeline of CPD Killing of Children*, South Side Weekly (April 14, 2021), <https://southsideweekly.com/a-timeline-of-cpd-killing-children/>.