



Consulting and Expert Witness Services, LLC

February 14, 2024

John Kelly
First Assistant County Attorney
Office of the Ramsey County Attorney
345 Wabash Street North, Suite 120
St. Paul, MN 55102-1432

Re: Officer Involved Shooting Death of Yia Xiong

Dear Mr. Kelly:

At your request, I have reviewed materials relating to the February 11, 2023, officer involved shooting death of Yia Xiong (see Attachment A for list of materials reviewed). After reviewing the materials, I am of the opinion, based on the totality of the circumstances, that the use of deadly force by St. Paul Police Officer Abdirahman Dahir and Officer Noushuh Cha's taser application were objectively reasonable and consistent with generally accepted police practices. I am also of the opinion that the officers' actions did not create the danger that caused the officers to use force.

Incident

On February 11, 2023, St. Paul Police Department (SPPD) officers were dispatched to the Winslow Commons apartment complex. The dispatcher told the officers a male had been kicked out of a party and he later returned and began threatening people with a knife. The subject, later identified as Yia Xiong, was described as a male Asian, approximately 50 years old, wearing an old dirty jacket and brown pants. As the officers responded, the dispatcher advised they received additional information that the subject may have a machete and that he was waving the weapon in a threatening manner.

The officers' response and uses of force were videotaped by several officers' body worn cameras (BWC). I have summarized Officer Cha's video below to present an overview of the incident.

Officer Cha's Body Worn Camera Video

17:05:51 – Officer Cha and his partner arrived on the scene and parked behind a marked St. Paul Police Department (SPPD) squad car. Officer Cha exited his vehicle and walked toward Officer Dahir. Officer Dahir said, ". . . Someone want to go Taser?" As Officers Cha and Dahir walked toward an apartment building, Officer Cha said, "I have a Taser."

17:06:42 – Officers Cha and Dahir and other officers arrived at the apartment building. Officer Dahir was in front of Officer Cha, and he opened the entrance door. Officers Cha and Dahir entered the vestibule and tried to open the second door, but it was locked.

17:06:50 – Officer Cha and the officers turned around and exited the building. They jogged toward a different structure. (There was muffled yelling in the background.)

17:07:06 – As Officer Cha got closer to the building, there were people in front of the building. Someone could be heard saying, "Please, hurry." Officer Cha's BWC captured a female carrying an infant car seat, another female carrying an infant on her chest, two juveniles, and another female.

17:07:09 – Officer Cha approached the front door of the building. An individual wearing a black ball cap, purple sweater, and blue jeans stood by the door and said, "The other side, the other side." The individual led Officer Cha into the building and there was another individual inside. This person was wearing a white sweatshirt and sweatpants and his hands were up in the air. On the floor near this person was a black semi-auto handgun. Someone could be heard saying, "Gun, gun." As Officer Cha continued to move inside the building, another individual came into view. This individual wore a black jacket and blue jeans, and his hands were raised in the air. Someone asked, "Where is he?" And the individual said, "Right there," as he pointed with his right hand toward Mr. Xiong.

17:07:20 – Officer Cha began to approach Mr. Xiong. Officer Cha told Mr. Xiong, "Hey, drop the knife." There was a male and female individual standing next to Mr. Xiong. Mr. Xiong turned away from Officer Cha and began walking away.

17:07:22 – Officer Cha lifted his Taser with his right hand and pointed it toward Mr. Xiong. Mr. Xiong walked away from the officers and did not respond to the commands.

17:07:23 – Mr. Xiong stopped walking and turned his body slightly toward Officer Cha and the other officers. An officer was heard giving the command, "Drop the knife." Mr. Xiong extended his arms outward to his side, exposing the palms of his hands.

17:07:25 – Mr. Xiong dropped his hands back to his side and continued to walk away from the officers and into a hallway. Officer Cha used his left hand to point at Mr. Xiong and said, "Hey, stop walking, come here." An officer said, "Get your hands out of your pocket."

17:07:28 – Mr. Xiong turned into a hallway and disappeared. Officer Cha said, "Come here," as he and other officers walked after Mr. Xiong.

17:07:31 – Officer Dahir walked in front of Officer Cha. Officer Cha told Officer Dahir to "Pie it, Pie it (a policing tactical term)." Officer Dahir was holding onto his rifle and pointing it in front of him.

17:07:35 – Officers Cha and Dahir rounded the corner and Mr. Xiong was in front of an apartment door. Officer Dahir yelled, "Drop...hey, get your hands out of your pocket."

17:07:37 – Officer Cha transitioned his taser from his right to his left hand. Commands were given to Mr. Xiong, but he did not look at the officers or acknowledge them and continued to try and open the apartment door.

17:07:41 – Mr. Xiong opened the door. Officer Cha and Dahir walked after Mr. Xiong and commanded Mr. Xiong to "drop the knife." Officer Cha was pointing his taser and Officer Dahir was pointing his patrol rifle at Mr. Xiong.

17:07:43 – Mr. Xiong entered the apartment, and someone said, "Don't...don't let him in." The door closed behind Mr. Xiong. (Other BWC videos show that approximately 7 officers approach the apartment).

17:07:45 – Officer Cha used his right hand to pull the door lever. The door opened and Mr. Xiong was standing behind the door. Mr. Xiong reached toward his back with his right hand.

17:07:47 – Officer Cha began retreating and someone said, "Stand back." Mr. Xiong presented a knife from his back with his right hand.

17:07:49 – Mr. Xiong placed the knife in front of his body, with the tip facing the officers and both hands on the handle.



17:07:50 – Officer Dahir yelled, "Bring it back," and began retreating. Mr. Xiong advanced toward the officers and Officer Cha deployed his taser at Mr. Xiong.

17:07:50 - Four gunshots are heard. As Officers Cha and Dahir backed out of the hallway, Mr. Xiong fell to the floor on his hands and knees. Mr. Xiong continued to hold onto the knife in his left hand.¹

Mr. Xiong was pronounced dead at the scene due to the gunshot wounds.

Standard of Review/Police Training

Police officers are trained about the U.S. Supreme Court's landmark decisions in *Graham v. Connor* and *Tennessee v. Garner*. Those decisions held that to determine whether the force used to affect a particular seizure is reasonable, one must balance the nature and quality of the intrusion on the individual's rights against the countervailing government interests at stake. This balancing test is achieved by the application of what the Court labeled the objective reasonableness test. The factors to be considered included in *Graham* and *Garner* are: 1.) The severity of the crime, 2.) Whether the suspect poses an immediate threat to the safety of the officers or others, and 3.) Whether the suspect is actively resisting or attempting to evade arrest by flight.

Whether one's actions were objectively reasonable cannot be considered in a vacuum, but must be considered in relation to the totality of the circumstances. The standard for evaluating a use of force reflects deference to the fact that peace officers are often forced to make split-second judgments in tense circumstances concerning the amount of force required. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Police officers are trained and prepared to assess dangerous situations and respond accordingly. Police officers are trained that for their force to be appropriate the level and manner of force must be proportional to the level of resistance and threat with which they are confronted. Proportionality is best understood as a range of permissible conduct based on the totality of the circumstances, rather than a set of specific, sequential, predefined force tactics arbitrarily paired to specified types or levels of resistance or threat.

Whether or not the suspect poses an immediate threat to the safety of the officer or others is the most important of the *Graham* and *Garner* factors. There must be objective factors to justify an immediate threat, as a simple statement by an officer that he fears for his safety or the safety

¹ There were multiple BWC videos that show the shooting. Those videos include Officers Cha, McManus, Chang, Dahir, and Lamb.

of others is insufficient. There is no requirement that a police officer wait until a suspect shoots to confirm that a serious threat of harm exists, but merely a subjective fear or a hunch will not justify the use of force by police. To determine if there was an immediate threat that would justify the use of deadly force, one must consider whether a reasonable police officer in Officer Dahir's position, knowing only the information known at the time by Officer Dahir would believe Mr. Xiong posed an immediate threat of death or serious bodily injury to Officer Dahir or others.²

In the State of Minnesota, "the use of deadly force by a peace officer in the line of duty is justified only if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary: (1) to protect the peace officer or another from death or great bodily harm, provided that the threat: (i) can be articulated with specificity by the law enforcement officer; (ii) is reasonably likely to occur absent action by the law enforcement officer; and (iii) must be addressed through the use of deadly force without unreasonable delay."³

Opinions

Officer Cha and Officer Dahir Forcing the Apartment Door Open

Police officers are trained that they can only force entry into a residence with a search warrant or a warrant exception. In this case, the officers did not have a search warrant, but they were in hot pursuit of Mr. Xiong as they were following within a few feet of him as he entered the apartment, and a reasonable police officer would have believed they had reasonable suspicion to detain Mr. Xiong for assault with a deadly weapon, a felony.

The officers were attempting to detain Mr. Xiong in a public place and police officers are trained that a person cannot defeat an otherwise lawful detention that was set in motion in a public place by retreating into their home. Moreover, a reasonable police officer would have believed they had an exigency to enter the home to protect other individuals who may be inside based on the totality of the circumstances known to the officers that included the reports that a man with a knife who was threatening people; women and small children who were apparently fleeing just outside the building saying "please hurry" to the officers just as they arrived; a man with his hands raised over his head as the officers entered saying the gun on the ground was his; a man pointed out Mr. Xiong to the officers; the fact that the officers confronted Mr. Xiong and ordered him to drop the knife; Mr. Xiong raised both arms to his sides exposing his open hands, and although Mr. Xiong did not have anything in hands his actions by raising his arms and exposing his hands combined with the officers all wearing distinctive police uniforms and pointing guns and tasers would have indicated to a reasonable police officer that Mr. Xiong heard and understood the officers' commands; the fact that Mr. Xiong was wearing a baggy jacket that

² See, SPPD policy section 246.00 – Response to Resistance or Aggression.

³ Minnesota Statutes 609.066.

could have concealed a weapon; and Mr. Xiong's refusal to obey the officers' commands and instead unlocked his door and entered his apartment.

It is my opinion that Officer Dahir's kicking Mr. Xiong's front door, followed by Officer Cha turning the door handle and opening the front door to detain Mr. Xiong and ensure that no one was at risk of harm inside the apartment, was reasonable and consistent with generally accepted police practices.

Officer Cha's Use of the Taser

The SPPD policy states that a taser may only be used to mitigate the threat of imminent physical harm presented by an aggressive or aggravated aggressive subject.⁴ The SPPD defines "Aggressive Resistance" as "The person displays by their behavior the (perceived) intent to harm the officer, themselves or another person and prevent an officer from placing them in custody and rendering the situation safe. The aggression may manifest itself through a person threatening an officer or another person with physical harm, taking a fighting stance, punching, kicking, striking, attacks with weapons or other actions that present an imminent threat of physical harm to the officer or another," and "Aggravated Aggressive Resistance" as "The person's actions are likely to result in death or serious bodily harm to the officer, themselves or another. These actions may include using or threatening to use a firearm, use of blunt or bladed weapon, or extreme physical force."⁵ The SPPD Police Department policy is consistent with generally accepted police practices.

Here, it was reported that Mr. Xiong had been threatening people with a knife. When the officers arrived, witnesses identified Mr. Xiong to the officers. Mr. Xiong also matched the physical description provided by the dispatcher. Mr. Xiong refused to obey the officers' commands and instead, Mr. Xiong retreated to an apartment, opened the front door, and went inside. When Officer Cha opened the front door of the apartment, Mr. Xiong held the knife in front of his body in a threatening position and moved toward the officers.

Based on the audio, it appears that Officer Cha deployed his taser just as, or slightly after, Officer Dahir fired his patrol rifle at Mr. Xiong.

⁴ See, SPPD policy section 246.02 – Authorized Force Tools, Descriptions, Training Requirements, Uses and Considerations.

⁵ See, SPPD policy section 246.00 – Response to Resistance.

The photograph below is a crime scene photograph of the knife possessed by Mr. Xiong.



A reasonable police officer in these circumstances would believe that Mr. Xiong presented an imminent threat of death or serious bodily injury within the definition of “aggravated aggressive resistance” and would use a taser to stop the threat.

It is my opinion that Officer Cha’s use of his taser was objectively reasonable and consistent with generally accepted police practices.

Officer Dahir’s Use of Deadly Force

Deadly force is that degree of force that is likely to produce death or great bodily harm. The use of deadly force in the line of duty is justified only if an objectively reasonable officer would believe, based upon the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is reasonably necessary.⁶

Officer Dahir said he was dispatched to a call of multiple callers reporting a man had been waving a machete in the community room of the apartment building. When he arrived, several people were pointing inside the building and said, “He’s in there.” Officer Dahir said he armed himself with a patrol rifle due to the reports that the subject had an edged weapon and he told Officer Cha to transition to his taser for a less-lethal option. Officer Dahir said Mr. Xiong matched the description of the suspect and he began giving commands to Mr. Xiong to show his hands, but Mr. Xiong walked away with one hand in his pocket.

⁶ See, SPPD policy section 246.00 – Response to Resistance or Aggression.

Officer Dahir said he followed Mr. Xiong down a hallway and Mr. Xiong began to enter an apartment door. Officer Dahir said he shouted to Officer Cha to not let Mr. Xiong into the apartment because he did not know who else may be inside fearing that Mr. Xiong may harm someone inside the apartment. Mr. Xiong entered the apartment and began to close the door, so Officer Dahir kicked the door, but was unsuccessful in keeping the door open. Officer Cha opened the door and Mr. Xiong, who had his right hand hidden from Officer Dahir's sight, began walking toward the officers. Officer Dahir said Mr. Xiong's hand came into view and he could see that Mr. Xiong was holding a large knife. Officer Dahir said he fired his rifle at Mr. Xiong fearing that Mr. Xiong would kill him or other officers.

I am of the opinion that Officer Dahir and Cha's lives were at imminent danger of death or serious bodily injury at the moment when Officer Dahir used deadly force by shooting Mr. Xiong. Mr. Xiong was holding a knife in front of his body with both hands; the officers were aware that it was reported that Mr. Xiong had threatened others with the knife prior to their arrival; Mr. Xiong failed to obey the officers' commands with the exception of briefly showing his empty hands; Mr. Xiong exited his apartment and moved toward the officers and was only a few feet away; and although the officers were retreating at the moment that Officer Cha deployed his taser and when Officer Dahir fired his patrol rifle, Mr. Xiong was advancing toward the officers.

Police officers are trained to use force there must be an immediate threat. An officer's perception that a threat exists is reasonable when the officer has reason to believe that an individual has the ability, opportunity, and intent to cause harm. Ability means the individual's physical capability to cause an identifiable type of harm. Opportunity refers the environment and situation, specifically with regard to the individual's proximity to the potential target were targets. And demonstrable intent refers to the individuals perceive mental state, their apparent desire to cause physical harm to the target were targets.

Where ability and opportunity may be relatively easy for an officer to diagnose based on readily observable physical characteristics, demonstrable intent is more complicated. Because police officers, like everyone else, lack the ability to divine another's intentions by peering into their mind, officers must rely on behavioral indicators and physical manifestations indicative of intent. For example, lunging at an officer with a knife is a clear physical manifestation of the intent to stab the officer. In contrast, an individual who is merely conversing with an officer while standing next to a knife block in a kitchen does not present any physical behaviors from which an officer could identify an intent to use a knife aggressively.

Here, a reasonable police officer would believe that Mr. Xiong had the ability to cause harm as he was holding a knife in a threatening manner and moving toward the officers, he had the opportunity to cause harm because he was armed with a knife and was a few feet away from the officers, and he manifested his intent based on his actions.

I believe a reasonable police officer in these circumstances, knowing all the facts known to Officer Dahir at the moment of the shooting would have used deadly force to protect their own life and the life of their fellow officer. I believe Officer Dahir's use of deadly force by shooting Mr. Xiong was objectively reasonable and consistent with generally accepted police practices.

The Officers Did Not Create the Danger That Led to Their Uses of Force

It is well-recognized that an officer's use-of-force decisions (that is, whether, when, and how to use force) are predicated to a significant degree on events that occurred prior to the use of force itself. In most incidents, including the interaction in this case, an officer's use of force is the result of "a contingent sequence of decisions and resulting behaviors—each increasing or decreasing the probability of an eventual use of . . . force."⁷ Put differently, "[a]n officer's use-of-force decision . . . will almost always be affected by events that occur prior to the use of force itself, and often prior to the subject's noncompliance, resistance, or other physical actions upon which the use of force is immediately predicated."⁸ It follows that the use of force cannot be properly evaluated without considering the preceding actions of officers, subjects, or bystanders.

The operational realities of policing require officers to manage an array of risks and threats. To manage those risks and threats, officers use tactics, which one source has defined as "a sequence of moves that limit the suspect's ability to inflict harm and [that] advance the ability of the officer to conclude the situation in the safest and least intrusive way."⁹ "Tactics are the techniques and procedures that officers use to protect themselves and community members by reducing risks, mitigating the likelihood that risks will become threats, and preventing threats from manifesting into harms."¹⁰ As they determine which tactical techniques and procedures are appropriate, officers must balance different and often shifting priorities in dynamic situations. While there is no way to completely ensure safety, police tactics seek to appropriately balance the safety of officers, subjects, and bystanders in light of those priorities.

Police tactics and tactical decision making are highly contextual; an approach that may be entirely appropriate in one context may be entirely inappropriate in another. To use a simplified example, the tactics that officers might use to address an armed, barricaded subject are generally inappropriate in an active shooter situation and vice versa. Context is key, with context being highly dependent on officers' reasonable perceptions of the situation. For a number of reasons, different officers may perceive the same situation differently. Tactically, it follows that those

⁷ Arnold Binder and Peter Scharf, *The Violent Police—Citizen Encounter*, 452 ANNALS OF AN, ACAD, POL. & SOC. SCI. 116(1980).

⁸ Seth W. Stoughton, Jeffrey J. Noble, and Geoffrey P. Alpert, *EVALUATING POLICE USES OF FORCE*, New York University Press (2020) at 227.

⁹ Jeffrey J. Noble & Geoffrey P. Alpert, *State-Created Danger in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS* at 568 (Roger Dunham and Geoffrey P. Alpert, eds., 7th ed., 2015).

¹⁰ Seth W. Stoughton, Jeffrey J. Noble, and Geoffrey P. Alpert, *EVALUATING POLICE USES OF FORCE*, New York University Press (2020) at 35.

officers may adopt different approaches, each aligning their approach with their perception of the situation. The ultimate question is whether, in light of the facts reasonably available at the time, the potential risks of the officer's decision or action were justified under the circumstances by the potential benefits of that decision or action.

Further, it is generally accepted within policing that there may be a range of reasonable responses in any given situation. The spectrum of options represents the number of ways in which the different priorities of the situation may be balanced. To use a simplified example, an officer may be safer from being physically assaulted if they stand farther away from the subject but may have more opportunity to prevent the subject from fleeing if they stand closer, so there may be a range of reasonable distances at which an officer could stand depending on their assessment of the risk of potential assault or potential flight. For purposes of this analysis, then, the question is not whether the officers involved adopted the best possible tactics, but whether their tactics fell within the spectrum of tactical options that could be considered reasonable under the circumstances.

Here, although the officers immediately entered the apartment building, confronted Mr. Xiong, and opened the door to his apartment, they did not create the danger that led to their uses of force. In these circumstances, a reasonable police officer would have made immediate entry into the apartment complex to protect the individuals inside. The officers responded on a call of a man with a knife who was threatening people inside the complex; they were confronted with several women and children, apparently fleeing from the building, who were just outside the building encouraging the officers to "please hurry;" as they entered, they saw a man with his hands raised and a handgun on the ground. Witnesses immediately identified Mr. Xiong and the officers began to give Mr. Xiong commands, but he fled to his apartment and entered the apartment despite the officers' commands. As discussed above, Officers Cha and Dahir kicked at the door and then Officer Cha opened Mr. Xiong's apartment door based both on hot pursuit and the emergency circumstances that Mr. Xiong may harm someone inside the apartment.

It is my opinion that the officers did not create the danger that led to their uses of force during the 40 seconds between the time they entered the apartment building and the time of the shooting.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Jeff Noble

JEFF NOBLE