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TO: Ramsey County Attorney John Choi and Minnesota Attorney General Keith Ellison

FROM: John Kelly, First Assistant Ramsey County Attorney; David Voigt, Deputy Minnesota Attorney General; Hao Nguyen, Trial Division Director, Ramsey County Attorney's Office; Erin Eldridge, Criminal Division Manager, Office of the Minnesota Attorney General; and Zuri Balmakund Santiago, Assistant Attorney General, Office of the Minnesota Attorney General

DATE: March 12, 2024

RE: ***In the Matter of the Death of Yia Xiong***
RCAO File No. 062-0559565 (Saint Paul Police Department Officer Abdirahmin Dahir)
BCA File No. 2023-153

I. INTRODUCTION

On February 11, 2023, Officer Abdirahmin Dahir of the Saint Paul Police Department ("SPPD"), used deadly force that resulted in the death of Yia Xiong, age 65. The Minnesota Bureau of Criminal Apprehension ("BCA") conducted the investigation of the circumstances resulting in the death of Mr. Xiong. The Ramsey County Attorney's Office ("RCAO") and the Office of the Minnesota Attorney General ("AGO") agreed to jointly review the evidence gathered by the BCA to determine whether Officer Dahir's use of deadly force against Mr. Xiong was justified under Minnesota law.

This Memorandum describes the relevant evidence gathered by the BCA during its investigation of the shooting of Mr. Xiong. As set forth below, this evidence includes statements given by law enforcement officers and other witnesses; physical evidence, including DNA and ballistics evidence; and audio and video recordings taken from the area, law enforcement in-squad cameras ("ICCs"), and the body-worn cameras ("BWCs") worn by the officers who were involved in the incident, including Officer Dahir. This Memorandum then applies the above-referenced evidence to the legal standard used to determine whether the use of deadly force by Officer Dahir was justified under Minnesota Statutes, Section 609.066.

Based on our review of the evidence presented to us by the BCA, and for the reasons explained in this Memorandum, it is our opinion that the use of deadly force by Officer Dahir against Mr. Xiong was justified under Minn. Stat. § 609.066, subd. 2(a)(1)(i-iii), (2) and (b). Accordingly, we recommend that no criminal charges be brought against Officer Dahir related to this incident.

II. CASE SUMMARY

A. Summary of Facts

At approximately 4:55 PM on February 11, 2023, B.W. called 911 to report that an unknown man had entered the party room in the apartment complex in which she resided at 160 Western Avenue in Saint Paul and was threatening members of her family with a knife.

B.W. told the 911 dispatcher that she and other members of her family were having a private birthday party for her 1-year-old granddaughter in the party room when an uninvited man, later identified as Yia Xiong, entered the room, and began offering money to some of the other young children attending the party. B.W. said that members of her family asked Mr. Xiong to leave, but he refused. B.W. said that Mr. Xiong eventually left the party room, but he returned approximately two hours later with a knife and threatened B.W.'s adult son R.H. Sr. B.W. said R.H. Sr. told her to return to her apartment when Mr. Xiong returned to the party room with the knife. B.W. described Mr. Xiong as a Hmong male, approximately 50 or 60 years old, wearing baggy, brown colored pants, and a dirty jacket. B.W. said he "looked high" and "crazy."

During B.W.'s 911 call, R.H. Sr. can be heard in the background telling his mother that he was retrieving his firearm that he placed in her apartment so that he can return to the party room and protect his children and other family members. R.H. Sr. is heard saying that he has a permit to carry the firearm and that the police need to hurry up and deal with Mr. Xiong. The 911 dispatcher told B.W. to assure her son that the police are on their way, and to also ask B.W. to have her son call 911 to tell them the present location of Mr. Xiong.

At about the same time that B.W. called 911, R.H. Sr.'s wife, A.K., also called 911. A.K. told the 911 dispatcher that an Asian male, approximately 50 to 60 years old, wearing baggy, brown colored pants, and a jacket, was "coming in and out of the party room" at 160 Western Avenue, threatening members of her family with a knife. A.K. said that man, again later identified as Mr. Xiong, had earlier entered the party room, and tried to touch her 1-year-old daughter. A.K. said that Mr. Xiong later returned to the party room with a knife and was "waving it around" in a threatening manner toward both her husband, R.H. Sr., and their adult son R.H. Jr. When asked by the 911 dispatcher, A.K. said that Mr. Xiong was not presently in the party room, but she believed he was somewhere else in the building. To keep safe, A.K. said that she and the other children at the party, were "barricading themselves" in the party room, while R.H. Sr. was upstairs in B.W.'s apartment.

During her 911 call, A.K. told the dispatcher that Mr. Xiong was returning towards her location. A.K. can be heard directing the children to come near her. A.K. is then heard yelling "We need help!" to call the attention of the arriving police officers. She then says to the dispatcher, "They're here. They're coming." A.K. is also heard saying to the arriving police that "He's armed ... and wearing a white shirt." A.K. then confirms to the 911 dispatcher that the police have arrived, and the call ends.

A 911 dispatcher issued the following Computer Aided Dispatch (“CAD”) information to SPPD officers, including Officers Dahir and Noushue Cha:

- At 4:57:09 p.m. – “Male was kicked out of a party [at 160 Western Avenue So.]...has now returned with a knife and was threatening people with the knife...has left the party again and is headed downstairs...Asian male, 50 years old, old dirty jacket, brown pants.”
- At 4:58:01 p.m. – “Complainant lives on the sixth floor...this occurred in the community room on the main floor.”
- At 4:58:05 p.m. – “207 [referencing Unit 207, representing the SPPD vehicle occupied by SPPD Sergeants Robert Kruse and Matt Welters] Less Lethal Approved.”
- At 4:58:43 p.m. – “Male appeared to be a homeless person.”
- At 5:00:13 p.m. – “This was secondhand info from the [complainant’s] son who is in the party at the community room...no apparent time delay...[complainant] advised to have son call 911 to give updates.”
- At 5:03:37 p.m. – “...Male with a machete.”
- At 5:04:25 p.m. – “262 [referencing Unit 262, representing the SPPD vehicle occupied by SPPD Officer Dahir] Clothing description of male please.”
- At 5:04:25 p.m. – “New caller [referencing A.K.] saying male with machete in the party room on 1st floor M E 5’0” Asian/Male tan jacket purple shirt and he is waving the weapon.”
- At 5:04:50 p.m. – “Problem changed from DOC – Disorderly Conduct to ASS – Assault by LAW [Shared].”
- At 5:05:13 p.m. – “Male no longer in the party room. [referencing A.K.] does not know where the male is but believed to be in the building.”

CAD log entries show that Officer Dahir was dispatched to 160 Western Avenue from 7th Street East and Kittson Street at 4:57:54 p.m. Video and audio taken from Officer Dahir’s BWC shows that he arrived at 160 Western Avenue at 5:01 p.m. Officer Dahir is the first officer to arrive at the scene and he notifies dispatch that he will wait for backup. The dispatcher acknowledges Officer Dahir’s communication. Officer Dahir is also seen checking the above-referenced CAD messages on the squad computer in his SPPD vehicle, while those same CAD messages are also heard being verbally communicated by the dispatcher. Officer Dahir asks the dispatcher for a description of the clothing worn by the suspect and is told that he is a 5’0” tall Asian male wearing a tan jacket and purple shirt.” while Officer Dahir is still seated in his vehicle, a male in a red plaid jacket approaches him to tell him about the situation involving Mr. Xiong. Officer Dahir tells him he is aware of the situation and that he is awaiting the arrival of additional police back-up.

As sirens can be heard signaling the arrival of other officers, Officer Dahir grabbed his SPPD-issued Nordic Components Model NC-15 Remington 5.56 mm NATO caliber rifle and exited his vehicle at 5:05:32 p.m. As other officers join him, Officer Dahir is heard asking “Does somebody want to go Taser?” Officer Dahir does this because his SPPD use of force training encourages the preparation of an array of options ranging from non-lethal force, less lethal force, and lethal force, in situations where deadly force may need to be used and where time permits the

consideration of those three options. SPPD Officer Noushue Cha offers to arm himself with his Taser.

Officer Dahir and four other SPPD officers began walking on the sidewalk on Western Avenue where they began to enter a side door of the apartment complex. Another officer redirects the officers to instead enter through the main door of the complex which is located further down Western Avenue. The officers then proceed to jog toward the large front driveway of the complex and the main door. As Officer Dahir and the other officers approach the driveway, they begin running faster toward the main door, where three adult females, together with young children, are seen outside the door and are heard loudly yelling for the officers to "Please, hurry! Hurry!" Officer Cha is heard asking, "Where is he?" Two of the women, later identified as A.K. and K.J.M. direct the officers into the front door.

At 5:07:09 p.m., the BWC video and audio evidence shows that Officers Cha and Dahir, are the first two officers to enter the building, where they see R.H. Sr. and R.H. Jr., in the vestibule. Officer Cha asks them, "Where is he?" and amid a somewhat chaotic scene, and among multiple voices loudly talking, R.H. Jr. responds, "The other side! The other side!" As Officer Cha and Dahir enter the large lobby area, J.C.H. is seen pointing them in the direction where Mr. Xiong is standing on the opposite side of the room. Officers Dahir and Cha then see Mr. Xiong wearing a jacket and purple shirt. Both officers ordered him three times to "Drop the knife!" Mr. Xiong continued walking away from the officers but stops after the third order to "Drop the knife! Where is it?" and he raises both arms to his sides as if to show that he does not have a knife. Mr. Xiong then drops his arms, puts his right hand in his right pants pocket and continues walking away from the officers despite the officers ordering him to "Stop walking! Come here! Hey, come here!!"

At 5:07:28 p.m., Mr. Xiong makes a left turn to enter the approximately 20 foot long, narrow hallway leading toward his apartment and the officers lose sight of him for approximately 6 seconds. They continue to loudly order him to "Come here!" Officer Dahir, armed with his rifle, is the first officer to reach the beginning of the hallway and as he turns the corner, he sees Mr. Xiong standing next to an apartment door in profile, facing the wall to the left of the door, with both of his hands together as if he is holding something. Officer Dahir loudly yells "Hey, get your hands out of your pockets! Officer Cha, who is holding his Taser in his left hand, is slightly behind and to the left of Officer Dahir, and sees Mr. Xiong, who is now facing the door with his right hand on the door handle. Officer Cha loudly orders Mr. Xiong to "Hey, drop down!", while Officer Dahir loudly yells to Mr. Xiong "On the ground. Get on the ground now!!" Another voice is heard yelling "Drop the knife!"

Mr. Xiong instead opens the door and enters the apartment. He is seen looking back toward the officers as he closes the apartment door. The officers are heard saying "Don't, don't let him in!" as they quickly rush to the door to prevent Mr. Xiong from entering the apartment. A written statement provided by Officer Dahir said that "we could not let the male inside the door due to not knowing who else was in the room and the possibility of the male hurting somebody else in the room." Both officers kick the door as it closed but were unsuccessful in opening it. Officer Cha then grabbed and turned the door handle and pushed the door open.

At 05:07:43 p.m., immediately after opening the door, video and audio taken from Officer Cha's BWC show that Mr. Xiong while approximately three feet inside the threshold area of his apartment, reaches behind his body with his right hand for something in his back area. Officer Cha is heard saying "Don't, Stop!" Officer Dahir is shown slightly leaning closer to Officer Cha to better see inside the apartment and he also sees Mr. Xiong's right hand hidden from view. Both officers suddenly see Mr. Xiong emerge from behind the door initially holding a large knife with his right hand on the handle. Officer Dahir loudly yells "Stop! "and "Bring it back!" while Officer Cha is heard saying "Get back," as they both quickly retreat away a few feet from the door. Mr. Xiong is then seen quickly advancing toward the officers while holding the handle of the knife with both hands in front of his body with the tip of the knife blade facing the officers.

At 5:07:50 p.m., with the officers approximately only five feet away from the advancing Mr. Xiong, both officers simultaneously fired their respective weapons at Mr. Xiong; Officer Cha fired his two-pronged Taser, with only one of the prongs attaching to the back of Mr. Xiong's wrist, and Officer Dahir fired his rifle five times, with all five rounds striking Mr. Xiong causing him to fall to the hallway floor. After placing handcuffs on Mr. Xiong, SPPD officers immediately began performing life-saving emergency first aid measures on him until Saint Paul Fire and Emergency Medical Services ("EMS") arrived on the scene approximately two minutes later, at 5:10 PM, EMS professionals continued performing life-saving measures on Mr. Xiong. Mr. Xiong was declared deceased at 5:26 p.m., and his body was transported to the Ramsey County Medical Examiner's Office.

The autopsy completed on February 12, 2023, by the Ramsey County Medical Examiner, found that Mr. Xiong was struck five times by gunfire, and that his death was caused by multiple gunshot wounds. Five spent shell casings fired from Officer Dahir's rifle were recovered at the scene by the BCA.

A knife was found next to Mr. Xiong's body. The knife is known as a traditional Hmong knife. The blade of the knife is 12 inches long with a pointed metal blade. Testing conducted by the BCA on the knife found next to Mr. Xiong's body, determined that his DNA was found on the knife.

III. SUMMARY OF RELEVANT EVIDENCE

A. Interviews and Statements of Material Witnesses

1. Interviews of Lay Witnesses

B.W.:

B.W. told BCA investigators that she lived in the building and rented out the party room for a family birthday party.

At approximately 4:55 p.m. on February 11, 2023, B.W. called 911 to report that an unknown man had entered the party room in the apartment complex in which she resided at 160 Western Avenue in Saint Paul and was threatening members of her family with a knife.

B.W. told the 911 dispatcher that she and other members of her family were having a private birthday party for her 1-year-old granddaughter in the party room when an uninvited man, later identified as Yia Xiong, entered the room, and began offering money to some of the other young children attending the party. B.W. said that members of her family asked Mr. Xiong to leave, but he refused. B.W. told investigators that she initially did not think Mr. Xiong understood English, but then he said, "What, what, what" after they were telling him to leave the room.

B.W. said that Mr. Xiong eventually left the party room, but he returned approximately two hours later with a knife and threatened B.W.'s adult son, R.H. Sr. B.W. said R.H. Sr. told her to return to her apartment when Mr. Xiong returned to the party room with the knife. B.W. described Mr. Xiong as a Hmong male, approximately 50 or 60 years old, wearing baggy, brown colored pants, and a dirty jacket. B.W. said he "looked high" and "crazy."

During B.W.'s 911 call, R.H. Sr. can be heard in the background telling his mother that he was retrieving his firearm that he placed in her apartment so that he can return to the party room and protect his children and other family members. R.H. Sr. is heard saying that he has a permit to carry the firearm and that the police need to hurry up and deal with Mr. Xiong. The 911 dispatcher told B.W. to assure her son that the police are on their way, and to also ask B.W. to have her son call 911 to tell them the present location of Mr. Xiong.

A.K.:

A.K. is the fiancée of R.H. Sr. and was the host of the birthday party for her daughter. A.K. told BCA investigators that the party began at 1:00 p.m. She stated that an unknown male, later identified as Mr. Xiong came into the party room and did not say a word to anyone. A.K. said that Mr. Xiong tried to touch several kids in the room, and he was told to leave several times. A.K. stated Mr. Xiong eventually left the room.

The party ended at approximately 4:00 p.m., and A.K. said that when she and her fiancé, R.H. Sr., attempted to go outside using the side door, Mr. Xiong returned, and pushed R.H. Sr. aside so he could get inside. A.K. said she then heard R.H. Sr. say about Mr. Xiong, "He's got a knife."

A.K. stated she ran back into the party room, gathered the young children in attendance, and moved them away from the interior doors. B.W. told A.K. to have R.H. Sr. call 911 but he was not present at that time. So instead A.K. called 911.

A.K. told the 911 dispatcher that an Asian male, approximately 50 to 60 years old, wearing baggy, brown colored pants, and a jacket, was "coming in and out of the party room" at 160 Western Avenue, threatening members of her family with a knife. A.K. said that man, again later identified as Mr. Xiong, had earlier entered the party room and tried to touch her 1-year-old daughter. A.K. said that Mr. Xiong later returned to the party room with a knife and was "waving it around" in a threatening manner toward both her husband, R.H. Sr., and their adult son R.H. Jr. When asked by the 911 dispatcher, A.K. said that Mr. Xiong was not presently in the party room, but she believed he was somewhere else in the building. To keep safe, A.K. said that she and the other children at the party, were "barricading themselves" in the party room, while R.H. Sr. was upstairs in B.W.'s apartment.

During her 911 call, A.K. told the dispatcher that Mr. Xiong was returning toward her location. A.K. can be heard directing the children to come near her. A.K. is then heard yelling "We need help!" to call the attention of the arriving police officers. She then says to the dispatcher, "They're here. They're coming." A.K. is also heard saying to the arriving police that "He's armed ... and wearing a white shirt." A.K. then confirms to the 911 dispatcher that the police have arrived, and the call ends.

A.K. could hear people yelling, "He's got a knife." She did not see the shooting but heard 4 to 5 gunshots. A.K. further said she stayed in the party room because she was also having a panic attack.

R.H. Sr.:

R.H. Sr. is the adult son of B.W. and the fiancé of A.K.

On February 11, 2023 at about one in the afternoon, R.H. Sr. told BCA investigators that he and members of his family were celebrating his daughter's first birthday at the Winslow Commons, a multi-complex apartment building. R.H. Sr. is very familiar with the apartment since he visits B.W. 4-5 times a week. The party was held in a designated party room near the common area on the first floor of the building that can be rented out by residents and is often used for special occasions. The room is separated from the common area with doors and a sliding partition. R.H., Sr. and his family decorated the room and were enjoying a nice celebration for his daughter. Towards the end of the party, he left to go up to his mother's apartment which was located on the sixth floor. While he was in her apartment, he received

a phone call from A.K. who was down in the party room. R.H. Sr. said that A.K. told him that he needed to return to the party room right away. He asked her why but wasn't able to hear a response as the phone cut out leaving them disconnected.

R.H. Sr. said that when he returned to the party room, he was told that a male, later identified as Mr. Xiong, tried to touch his daughter and granddaughter. R.H. Sr. said his family told him that the kids weren't touched in a sexual way, but rather he described the touching as unwanted due to the fact Mr. Xiong was a total stranger. R.H. Sr. said he learned that his son, J.C.H. had an interaction where Mr. Xiong punched his son. R.H. Sr. told his son to relax and just to not worry about it, telling J.C.H. and the rest of his family, that they should just clean up the party room and leave.

As R.H. Sr. and A.K. were outside the building loading up his van with birthday decorations, he saw Mr. Xiong approach him. R.H. Sr. said that Mr. Xiong walked up to him and gave him a heavy shove. R.H. Sr. said he didn't think much of it and wanted to continue loading the van up so that they all could just leave. R.H. Sr. said he went back inside the building and saw Mr. Xiong coming out of an apartment with a machete in his hand. R.H. Sr. said that Mr. Xiong walked directly toward him, and coming within about two arm lengths of where he was standing, he saw Mr. Xiong holding the machete as if he was about to swing at him. R.H. Sr. then ran away from Mr. Xiong, leaving the building.

Once outside the building, R.H. Sr. saw A.K. also standing just outside the doorway. R.H. Sr. said that because Mr. Xiong was pursuing him, he held the door from the outside to prevent Mr. Xiong from opening it to get to him and A.K. Mr. Xiong continually tried to push the door open but was unable to do so. Mr. Xiong eventually left and walked away. R.H. Sr. re-entered the building through a different door and returned to his mother's apartment, where he retrieved his handgun that he kept in a backpack. Fearing for the safety of his family R.H. Sr., who has a permit to carry a firearm, returned to the party room with his handgun.

When R.H. Sr. returned downstairs, he saw Mr. Xiong return to the common room next to the area where R.H. Sr.'s family was located. R.H. Sr. said that Mr. Xiong now had the machete in his waist band. R.H. Sr. told B.W. and A.K. to call the police. R.H. Sr. saw Mr. Xiong reaching toward the small of his back, and he was worried that Mr. Xiong would come at him and his family. To protect himself and his family R.H. Sr. hid behind the partition that separated the party room from the common area. R.H. Sr. said he never showed Mr. Xiong his handgun but had it ready in case he needed to use it.

R.H. Sr. said that he was relieved that officers arrived when they did because he was prepared to shoot Mr. Xiong if necessary to defend himself and his family. As officers arrived on scene, he dropped his gun and put it on the floor notifying officers of the presence of a gun. He then assisted the officers in identifying Mr. Xiong, by pointing to him as the suspect.

R.H. Jr.:

R.H. Jr. is the adult son of R.H. Sr., the brother of J.C.H., and the grandson of B.W.

R.H. Jr. told BCA investigators that he and other members of his family were at B.W.'s apartment complex celebrating his sister's first birthday. He had been to the apartment before saying his grandmother had lived in the building for many years without incident. R.H. Jr. said toward the end of the party, R.H. Sr., J.C.H, and he, went upstairs to B.W.'s apartment to get scissors and other supplies needed to clean up the party room area. By the time they returned to the party room, K.J.M. was frantic and upset. She told them that an Asian male, later identified as Mr. Xiong, just tried to touch her infant and tried talking to several of the kids present at the party. R.H. Jr. said he didn't see Mr. Xiong around so didn't pay much attention to the matter further. A short time later J.C.H. and K.J.M. went upstairs and while on their way saw Mr. Xiong.

R.H. Jr. said that there must have been an altercation between J.C.H. and Mr. Xiong because his brother came running back to the party room and told him that Mr. Xiong had just punched him in his face, and that he in turn punched Mr. Xiong back. R.H. Jr. then went to find R.H. Sr., who was outside loading car seats and party supplies into his van that was parked just outside a long hallway. As R.H. Jr. walked down the hallway toward R.H. Sr. he saw Mr. Xiong rushing past his father and into an apartment. R.H. Jr. believed that Mr. Xiong lived in the apartment that he entered. R.H. Jr. told his father, R.H. Sr., that the Asian male that just pushed past him was the one that everyone was talking about. R.H. Jr. said that Mr. Xiong then exited the apartment and was armed with a knife. R.H. Jr. described the blade as approximately one-inch thick and several inches long.

R.H. Jr. told his brother and father that Mr. Xiong had a knife. R.H. Jr. told his brother and father to go back into the party room and as they did Mr. Xiong followed them. There were children and other members of the family present in the party room. R.H. Jr. saw Mr. Xiong holding the knife down with his right hand. As Mr. Xiong approached them, he had the blade pointed at them. R.H. Jr. said Mr. Xiong was stepping toward them holding the knife in one hand while using his other hand to motion for them to come at him.

R.H. Jr. said he did not want to escalate things and was just worried about his safety and the safety of his family. Mr. Xiong started to advance on him and so R.H. Jr. screamed for his dad to help. Mr. Xiong then walked toward his father while holding the knife. He saw his father run away from Mr. Xiong. He later learned that his father went upstairs to retrieve a handgun. After a short time, his father (R.H. Sr.) returned to the party room, Mr. Xiong was there walking toward them, going back and forth. R.H. Jr. said his father kept yelling "We don't want any trouble," and repeatedly telling him that they did not want any issues. His father was attempting to de-escalate the situation.

Officers quickly arrived on scene. R.H. Jr. saw officers arrive and heard officers saying, "Drop it. Drop it," and shortly after hearing these commands, R.H. Jr. heard gun shots. He believes he heard about four or five shots. He heard officers calling for medical help and saying out

loud that shots had been fired. R.H. Jr. said he took a couple of short recordings from the scene. Both are recordings of Mr. Xiong in the common area when his father was telling Mr. Xiong that they didn't want any trouble with him. The second recording captures the moment police arrived but did not capture the shooting.

J.C.H.:

J.C.H. is the adult son of R.H. Sr., the brother of R.H. Jr., the grandson of B.W., and the boyfriend of K.J.M.

J.C.H. told BCA investigators that he was with his family at a birthday celebration, including his four-month-old child. At some point during the party, J.C.H. went upstairs with his father R.J.H. Sr. to get some balloons for the party. A.K. called them and said they needed to return to the party room right away. The two men went back downstairs and were told that a male later identified as Mr. Xiong had touched two kids. J.C.H. said K.J.M. told him Mr. Xiong had touched his and his father's daughter. He was also told that Mr. Xiong tried to give money to one of the young girls.

J.C.H. said that Mr. Xiong had disappeared at this point but later reappeared near one of the outside doors. J.C.H. went over to Mr. Xiong and asked him if he had touched the kids? Mr. Xiong replied that he had, saying "yeah at the party." It was at this point that Mr. Xiong lunged at him, swinging a fist, landing a strike on J.C.H.'s face. J.C.H. said he swung back hitting Mr. Xiong once in the face causing him to backup. J.C.H. then took the opportunity to close and lock the door that was between him and Mr. Xiong. After Mr. Xiong walked away, J.C.H. returned to the area of the party room. Once there J.C.H. saw Mr. Xiong re-enter the building and walk toward him and his other family members. Mr. Xiong remained in the common area gesturing for J.C.H. and others to come toward him. J.C.H. said he wanted to de-escalate the situation, so he ignored Mr. Xiong's motions to come at him.

J.C.H., never saw Mr. Xiong with a machete but heard other family members say that Mr. Xiong was armed with a big knife. J.C.H. knew that officers had been called to the scene, so he met officers at the front of the building. As officers arrived, he told officers that his father wasn't a threat, that his father had a gun but that he had a permit to carry the gun. He was afraid for his father's safety. Officers quickly treated his father with respect and understood that he and father were the ones who called 911.

J.C.H. then pointed officers toward Mr. Xiong, identifying him as the suspect who they called police about. J.C.H. then immediately took his infant daughter upstairs to his grandmother's room. He heard officers screaming commands at Mr. Xiong to drop his weapon. It was at that point he heard about two to 4 shots being fired.

K. J.M.:

K.J.M. is the girlfriend of J.C.H. and the mother of their four-month-old child.

K.J.M. told BCA investigators that at approximately 1:00 p.m., she and J.C.H. were at B.W.'s apartment building for his stepsister's birthday party. Towards the end of the party an Asian male (later identified as Mr. Xiong) came into the party room. B.W. told Mr. Xiong that it was a birthday party and asked why he was there. Mr. Xiong said he had to use the vending machines. Instead of using the vending machines J.J.M. said Mr. Xiong reached out and touched her daughter whom she was holding at the time. K.J.M., said she pushed Mr. Xiong's hands away and told him that he couldn't touch any of the kids.

K.J.M. said that Mr. Xiong then walked away from her and toward the one-year-old whose birthday was being celebrated. K.J.M. saw Mr. Xiong try to touch the birthday girl and another child who was sitting close by. K.J.M., then handed her daughter to someone else and then put herself in between Mr. Xiong and the kids. K.J.M., told Mr. Xiong to leave. Instead of leaving, Mr. Xiong took his wallet out and offered one of the children, five dollars. K.J.M. told Mr. Xiong again to leave, but he refused to do so, continuing to waive money around trying to give it to the children.

K.J.M. said she was able to get Mr. Xiong outside of the party room, but she said he remained in the common area. K.J.M. did not know if he was a tenant of the building or an intruder. Shortly after that J.C.H., R.H. Sr., and R.H. Jr. returned to the party room and K.J.M. told them what happened with Mr. Xiong.

At approximately 4:30 p.m., K.J.M. said that she and J.C.H. saw Mr. Xiong near an entrance of the building. K.J.M. said that J.C.H. asked Mr. Xiong if he tried to touch the kids. K.J.M. said that Mr. Xiong responded in what she described as "perfectly fine English" by saying that he did try to touch the kids at the party. K.J.M. said that Mr. Xiong then punched J.C.H., who in turn punched Mr. Xiong. J.C.H. then shut the door between them and Mr. Xiong, with them inside the building and Mr. Xiong outside the building. K.J.M. said that she then returned to the party room because she was worried for the kids and their safety. K.J.M. said R.H. Sr. returned to the room with his handgun.

K.J.M. said that Mr. Xiong eventually re-entered the building and entered an apartment. K.J.M. later saw him exit his apartment, armed with a knife. K.J.M. said that Mr. Xiong approached R.H. Sr. with the knife telling him to come at him. She said that no one wanted to engage with Mr. Xiong, but they were just trying to defend the guests in the party room. She said that everyone was telling Mr. Xiong to leave them alone. Shortly after, they told all the kids to go outside.

K.J.M. was outside the front door with A.K. and the children when they saw SPPD officers began to arrive. She said initially the officers were walking toward the front door. But because she and A.K. began screaming at them to hurry and telling them that Mr. Xiong "has a machete," the officers began running toward the front door of the building.

K.J.M. did not witness the shooting but did hear the gunshots.

S.R.J.:

S.R.J., was a tenant in the building, residing in an apartment on the 6th floor.

On February 11, 2023, S.R.J. told BCA investigators that she went downstairs to have a cigarette. When she arrived in the common area of the building, she noticed there was a birthday party in the community room. She said she was met by a black male who told her that there was an Asian male who had a machete. She then saw Mr. Xiong walk out of his apartment and learned that he was the male who others said had the machete. She learned that the people in the community room had already called police for help. S.R.J. did not witness the shooting of Mr. Xiong, but she heard officers yelling commands at Mr. Xiong to put his hands up and to drop the knife. She wasn't sure if Mr. Xiong understood them. She's had some small interactions with Mr. Xiong and learned through her time with him that he spoke little English. S.R.J. said she never saw Mr. Xiong with a knife or machete, but she heard others say he was armed. She also learned that Mr. Xiong was in the party room touching the kids. S.R.J. said the family that was in the party room were pretty shaken up.

V.Y.:

V.Y., was a tenant of the building, who described himself as a neighbor of Mr. Xiong.

V.Y. did not see officers shoot Mr. Xiong but heard noises and gun shots that day. He was worried about Mr. Xiong because his wife had recently left him, and he knew that Mr. Xiong had previously tried to commit suicide. V.Y. also said that based on his interactions with Mr. Xiong, he knew Mr. Xiong was struggling with alcohol and depression. V.Y. said that Mr. Xiong had a difficult time speaking and understanding English.

K.C.:

K.C. is Mr. Xiong's brother-in-law and has been a tenant in the building residing in an apartment on the third floor for eight years.

K.C. told BCA investigators that on the day of the shooting, Mr. Xiong invited K.C. to join him for breakfast. K.C. declined the invitation because he had to leave to attend a funeral. K.C. neither witnessed, nor was present in the building at the time of the shooting, but only learned about it later. K.C. said that he's been concerned for Mr. Xiong ever since his wife left him. K.C. said Mr. Xiong used to live in Milwaukee Wisconsin, but then the family moved him to Saint Paul to be closer to them because they were worried about his wellbeing. Mr. Xiong had previously attempted to kill himself with a knife, which resulted in his hospitalization for a long period of time. K.C. said that the family worried for Mr. Xiong's safety because he also smoked and drank alcohol often. In addition, K.C. said that Mr. Xiong was suffering from depression.

2. Written Statements and Interviews of Material Law Enforcement and Other First Responder Witnesses

Written Statement of SPPD Officer Abdirahman Dahir:

Officer Dahir declined to be interviewed by BCA investigators and instead provided a written statement.

According to his written statement, Officer Dahir said that on February 11, 2023, at about 4:55 p.m., he was on patrol, dressed in full uniform and driving a fully marked squad car. He received an assault call from dispatch and responded to an apartment located at 160 Western Avenue South, in Saint Paul, Minnesota. Dispatcher informed officers via their squad computers, relaying information that there were multiple 911 callers at the location of the assault. These callers reported that there was a male waving a machete on the first floor of the community room. Due to the serious nature of the incident and because of the information received by dispatch, Officer Dahir turned his emergency lights and siren on while he headed to the address. Arriving at the scene, he parked a half block away and waited for other officers to arrive.

While he waited inside his vehicle, the dispatch center told him there was another caller who was reporting a male with a machete near the intersection of Western Avenue. Seeing a male wearing a red plaid shirt near the intersection, Officer Dahir asked for a description of the male, telling dispatch that he had a male, at Western Avenue walking toward him who was wearing a red plaid shirt. As the male approached his vehicle, Officer Dahir could see that the male's hands were empty, leading him to believe that the male was not the suspect that was the subject of the 911 callers. The male with the red plaid shirt approached Officer Dahir's driver's side window and told him to "Hurry up, there is a man with a knife in there." Officer Dahir told the male that he was aware of the situation but was waiting for additional officers to arrive.

A short time later, other officers arrived. Due to the reports of a male with an edge weapon, Officer Dahir said that he decided to grab his department issued rifle. He said he then asked Officer Noushue Cha if he wanted to arm himself with his Taser. Officer Dahir said he made this request, so the officers would have a less lethal option available to them.

Officer Dahir said that he and other officers initially began entering a door of the incorrect building; they were redirected by another officer to enter the correct building where he heard a loud commotion coming from outside. Officer Dahir together with his colleagues then ran toward the sound of people yelling outside the correct building. As he got closer to the building, Officer Dahir said he could see several people exiting the address, some of them were holding children and many of them were pointing toward the inside of the building's entrance saying something to the effect of "He's in there!"

As Officer Dahir entered the building, he walked past the door and saw that it led to a big open space. Inside the space he saw numerous people standing around. When he asked for help in locating the suspect, Officer Dahir said several people pointed toward two Asian males near the side of the room. Officer Dahir shouted commands at these two Asian males, giving them clear commands to show him their hands. He then saw that one of the Asian males was wearing a purple shirt, which matched the description that was given to him by dispatch. He then focused on the male wearing the purple shirt, giving him commands to show his hands, (this male would later be identified as Mr. Xiong). Mr. Xiong continued to walk away from him and failed to listen to commands. Officer Dahir could see that Mr. Xiong had one of his hands inside a pocket. Mr. Xiong began to walk toward a narrow short hallway.

The short narrow hallway led to an apartment door. Mr. Xiong turned his back to Officer Dahir and other fellow officers as Mr. Xiong attempted to enter the door. Officer Dahir yelled several more commands at Mr. Xiong asking him to get on the ground and to show his hands to officers. Mr. Xiong did not comply or listen to these commands. Mr. Xiong then opened the door and entered the apartment unit. Officer Dahir then shouted to Officer Cha that they could not let Mr. Xiong into the apartment unit. He told Officer Cha this was because he was concerned for the safety of anyone who could be inside the apartment unit. Mr. Xiong entered the apartment. Fearing for the safety of anyone else who might be in the apartment, Officer Dahir attempted to kick the door open in order to gain a better view of the apartment, hoping to see if he could tell if there were others inside the apartment unit. Officer Dahir was unsuccessful in kicking the door open as it closed shut and latched. Officer Dahir then saw Officer Cha turn the door handle and swing the door open.

When the door opened, Officer Dahir saw Mr. Xiong standing toward the right side of the room. Mr. Xiong's right hand was hidden from sight. Mr. Xiong then began walking toward him and Officer Cha. He and Officer Cha were standing just outside the threshold of the apartment door that was enclosed in a very narrow hallway. Officer Dahir then saw Mr. Xiong's right hand come into view. Inside Mr. Xiong's right hand was a large knife. Officer Dahir then began retreating and walking backwards away from Mr. Xiong. With the knife still in hand Mr. Xiong continued to walk toward him and Officer Cha. Officer Dahir said that he feared for his safety, believing that Mr. Xiong would cause his death and the death of his fellow officers, he used his department-issued rifle and fired 5 shots at Mr. Xiong.

Mr. Xiong, after being shot, dropped to the floor on his stomach and while on the ground was still holding onto the knife. Office Dahir immediately notified dispatch letting them know that shots had been fired. Office Dahir then requested dispatch send paramedics to the scene. Seeing that Mr. Xiong still had the knife, Office Dahir gave commands to him to show his hands, so that he could retrieve the knife to allow other officers to safely render aid to Mr. Xiong. Several other officers quickly took over and made the scene safe. These officers also provided medical aid to Mr. Xiong until paramedics arrived on scene. Officer Dahir waited until a sergeant arrived on scene.

Written Statement of SPPD Officer Noushue Cha:

Officer Cha declined to be interviewed by BCA investigators and instead provided a written statement.

Officer Cha said that on February 11, 2023, around 4:55 p.m., he and SPPD Officer McManus were sent to an apartment complex known as the Winslow Commons. Dispatch told them there were reports of a male threatening people with a machete. 911 callers described the machete wielding person as an Asian male, who was about 5 feet, 5 inches tall and wearing a purple shirt. When Officer McManus and his partner arrived at the scene, they parked right behind Officer Dahir's squad. Once outside of the squad car, Officer Cha unholstered his handgun but then was asked by Officer Dahir to use a Taser instead as the group wanted to have a less lethal option available.

As he and other officers approached a door that they thought was 160 Western Avenue South, they heard a loud group of people shouting and directing them toward a male suspect. He and other officers ran toward these people who were located outside of a building that was just north of the building he and officers initially entered. As he got close to the building, he could see a family with many children on scene outside of the building. Once inside the building he saw a male matching the description of the suspect who was reported to have a machete. This male was later identified as Mr. Xiong. Officer Cha stated he gave Mr. Xiong commands to stop and walk toward him and other officers. Mr. Xiong did not comply and did not listen; instead he turned around and walked away toward a hallway. Once Mr. Xiong got into the hallway, Officer Cha said he and others lost sight of him.

Officer Cha along with Officer Dahir pursued Mr. Xiong into the hallway. They followed him into a hallway toward a door. Mr. Xiong then went inside the room and shut the door behind him. Officer Dahir tried to kick open the door and was unsuccessful. Officer Cha said he also tried to kick the door, but he too could not open it. Officer Cha then tried the doorknob and was able to open the door. While doing so he was holding his Taser and pointing it toward where Mr. Xiong would have been. As the door opened, Officer Cha said he saw Mr. Xiong with his right hand reaching for something from the area of his back. Officer Cha then saw Mr. Xiong pull out a knife, holding the weapon with his right hand. It was at this point that Officer Cha and Officer Dahir took steps backwards to create distance between themselves and Mr. Xiong. Mr. Xiong took sudden and quick steps toward him and Officer Dahir.

Officer Cha deployed his Taser at Mr. Xiong. Simultaneously as he deployed his Taser, he also heard an unknown number of gunshots being fired. Officer Cha said he was shoulder to shoulder with officer Dahir during this time. Officer Cha then radioed to dispatch alerting everyone that shots had been fired. Mr. Xiong fell to the ground. Officer Cha then put his Taser down and approached Mr. Xiong searching for the knife. Officer Cha located the knife under Mr. Xiong's body and removed it. Officer Cha then said he put the knife near his Taser, while other officers immediately began rendering medical aid to Mr. Xiong. Officer McManus asked Officer Cha to go get a trauma kit. He was able to find one quickly and began assisting officers in rendering aid to Mr. Xiong.

Written Statement of SPPD Officer Ricardo Perez-Estrella:

Officer Perez-Estrella declined to be interviewed by BCA investigators and instead provided a written statement.

On February 11, 2023, at approximately 5:00 p.m., Officer Perez-Estrella said that he and other SPPD officers were dispatched to 160 Western Avenue South, in Saint Paul, for a weapons complaint. Dispatch told officers there was someone threatening people with a knife in the community room.

Upon arrival Officer Perez-Estrella said he parked his squad car and took out his department issued assault rifle. While walking toward the address he could hear the screaming of adults and children, causing him and the other officers to run faster toward the apartment building. While rushing toward the commotion he saw multiple adults and children crying and visibly scared. These people then began to point toward the main lobby telling him and his partners that the suspect (later identified as Mr. Xiong) was inside the building with a knife.

Once inside the building Officer Perez-Estrella said he saw additional people point toward Mr. Xiong who was located inside the lobby area. Officer Perez-Estrella said he told Mr. Xiong he was a police officer and gave commands for Mr. Xiong to drop the knife. He gave Mr. Xiong these commands several times but Mr. Xiong did not comply and continued to walk away.

Officer Perez-Estrella directed the two officers in front of him not to let Mr. Xiong enter the apartment unit that he was trying to enter. Officer Perez-Estrella said he gave these commands to his fellow officers because he was afraid for the safety of others as they did not know if there were additional victims inside the apartment or if there were additional weapons that Mr. Xiong could access once inside the apartment unit.

Officer Perez-Estrella saw the two officers in front of him try to kick open the door before Mr. Xiong was able to close it. Officer Perez-Estrella then saw Mr. Xiong walk toward him and the other officers. Mr. Xiong was wildly brandishing a knife and moved toward him and the other officers. Officer Perez-Estrella said he commanded Mr. Xiong to stop, but he did not comply.

Officer Perez-Estrella said he was in fear for his safety as well as the safety of his fellow officer, so he took his weapon off safety and prepared to fire his rifle at Mr. Xiong. However, he did not fire because there was crossfire with two of his officers directly in front of him. Instead, Officer Perez-Estrella said he kept his rifle down and retreated while other officers fired at Mr. Xiong.

Officer Perez-Estrella said that as Mr. Xiong fell to the ground, he still had the knife in his hand. Two officers then approached Mr. Xiong and removed the knife from his reach. Officer Perez-Estrella then handed his rifle to Officer Lamb, and began to administer medical aid to Mr. Xiong, which included checking his pulse, breathing, and providing CPR. After a short time, another officer took over CPR, while Officer Perez-Estrella applied pressure to Mr. Xiong's wounds. Paramedics arrived shortly to take over medical procedures.

Written Statement of SPPD Officer Lorenzo Lamb:

Officer Lamb declined to be interviewed by BCA investigators and instead provided a written statement.

On February 11, 2023, at approximately 4:57 p.m., Officer Lamb said he arrived at the scene on a report of an Asian male who was being disorderly; the call was then updated to a weapons related call. Dispatch informed him and other officers that a male had been kicked out of a party that was being held in the common area of the apartment. The male then returned with a machete and threatened people.

Officer Lamb said that upon his arrival to the scene, he saw there were several other SPPD squad cars already on location. He headed toward the building in stride with SPPD Officer Ching Vang. As they went around the north side of the building, he could hear people screaming and yelling for help. These people were stating that the male had just gone through the front door.

Officer Lamb said he and the other officers quickly entered the building entrance. As he ran through the threshold of the door, he heard SPPD Officer Vang yell "Gun!" Officer Lamb saw a black handgun on the floor, and then heard a nearby witness yell that the handgun was his. Officer Ching Vang then stood by the gun to make sure it was secure. Officer Lamb proceeded forward with Officers Perez-Estrella, McManus, Dahir, and Cha toward the hallway.

Once in the hallway, Officer Lamb said he saw the suspect (later identified as Mr. Xiong). Officer Lamb and other officers gave verbal commands for Mr. Xiong to drop the knife. Mr. Xiong refused to do so, but instead he continued to walk away toward an apartment door, unlocked the door, went inside, and closed the door behind him. Officers Dahir and Cha attempted to kick the door to prevent it from shutting. It was at this time that Mr. Xiong opened the door. Officer Lamb saw that Mr. Xiong had a knife in his hand and began running toward the officers. Officer Lamb said that he and the other officers began to retreat down the short narrow hallway, away from the door. Officer Dahir then fired shots at Mr. Xiong while Officer Cha fired his Taser.

Officer Lamb said he did not fire his department-issued rifle due to the hallway having too many people in it. Officer Lamb said he saw Mr. Xiong drop to the ground while officers continued to give commands to Mr. Xiong to drop the knife. While officers McManus and Perez-Estrella approached Mr. Xiong, Officer Lamb continued to aim his rifle down toward the entrance of Mr. Xiong's apartment. He then took Officer Perez-Estrella's rifle from him to allow to him to provide medical aid to Mr. Xiong.

Officer Lamb said he saw Mr. Xiong's knife on the ground, describing it as having a wooden handle and a blade approximately 12-18 inches in length.

Written Statement of SPPD Officer Ching Vang:

Officer Vang declined to be interviewed by BCA investigators and instead provided a written statement.

On February 11, 2023, at approximately 4:55 p.m., Officer Vang said that he arrived at the scene in response to a report of a male suspect who was kicked out of a party in the apartment building's party room. He was also told that the suspect returned to the party with a knife and was threatening people with it. The suspect was described as an Asian male who was approximately 50 years old.

When Officer Vang first entered the building, he noticed there was a gun on the floor. He yelled out "gun" to his fellow officers and quickly secured the gun. Officer Vang said that one of the bystander/witnesses who was inside the building stated that it was his gun, and he had a conceal-and-carry permit. Officer Vang told him that he would secure it for the time being.

Officer Vang said that when he caught up with the other officers, he noticed multiple officers cramped inside a small hallway. The small hallway led to an apartment door that was open. He also noticed two officers standing outside by the open door. He said he heard multiple officers yelling "drop the knife." The officers in front of him started to back up so he backed up as well. During this time, he said he could still hear the officers yelling to drop the knife. When he and the other officers backed up, he said he heard 2 to 3 shots ring out. Officer Vang then proceeded to go forward and look around the corner into the hallway, and he could see a male lying face down on the ground with a brown jacket. He said that officers radioed dispatch that shots were fired and to start medics.

Officer Vang said that because there was a wall and hallway blocking his view, he did not see the suspect come out the door from the room or the suspect advancing toward the other officers.

3. Interview of Saint Paul Fire Department EMT Sarah Reasoner:

On February 11, 2023, EMT Reasoner was working in her role as a Saint Paul Fire Department EMT, she had been employed for about 3 years at the time of the incident. She and some other members of her unit were dispatched to a critical incident at an apartment building located at 160 Western Avenue South. When they arrived, she saw 2 or 3 SPPD officers running out toward her. They waved her and her partners inside the building. She grabbed her medical bag and ran inside the building. She followed the officers and ran past some civilians who were standing near the entrance. When she arrived to the hallway area, she saw at least 2 SPPD officers providing medical care to a male who was on the ground. One officer was providing chest compressions while the other was applying pressure to several wounds. S.R. took over chest compressions. After consultation with a medical doctor, Mr. Xiong was declared deceased.

B. Toxicology Test Results of Officer Dahir and Mr. Xiong

Officer Dahir voluntarily submitted to a breath toxicology test that was collected at 7:16 p.m., on February 11, 2023. On the same day, Officer Dahir also voluntarily submitted a blood sample for toxicological testing. The results of both tests for Officer Dahir were negative for the presence of alcohol or a lengthy list of controlled substances.

A blood sample taken from Mr. Xiong by the Medical Examiner tested positive for ethanol (204 mg/dl) and a blood alcohol concentration of 0.204 g/100 ml. Mr. Xiong's blood sample tested negative for a lengthy list of controlled substances.

C. Body-Worn Camera Evidence

1. Officer Dahir:

The following description is of the sequence of events as captured on Officer Dahir's body-worn camera during this incident.

The video date is 02/11/2023 | Video start time is 4:57:58 PM | Video end time is 5:13:25

- At 04:57:58, Officer Dahir is driving his squad car. There is no audio for the first 30 seconds of the video.
- At 04:58:28, the audio turns on and the squad's sirens can be heard. Officer Dahir continues to drive to the scene with the squad lights and sirens activated.
- At 05:02:02, Officer Dahir arrives on scene and parks his squad car and remains in his squad car reading information on his in-car computer.
- At 05:02:12, an individual walks up to the squad car and tries to talk to Officer Dahir. Officer Dahir tells the person that he is waiting for another squad car to arrive.
- At 05:05:23, Officer Dahir grabs his patrol rifle and pulls the charging handle, arming the rifle.
- At 05:05:23, Officer Dahir exits his squad car. He slings his rifle over his body and stands in the street. Other squad cars are seen arriving on scene.
- At 05:05:58, Officer Dahir looks to his left and says, "Somebody want to go Taser?" He then walks toward an apartment building and into the vestibule area. He tries to open the second door but is unable to get inside since the door is locked.
- At 05:06:50, Officer Dahir and other officers turn around and exit the building. They run to a second building; muffled yelling can be heard in the background.
- At 05:07:06, as Officer Dahir approaches the second building, people can be seen outside. His rifle was partially covering his body-worn camera lens. A citizen can be heard saying "Please, Hurry." There is a female standing outside carrying an infant car seat. There is another female holding an infant on her chest. Another female can be seen standing next to them also.
- At 05:07:09, Officer Dahir is seen behind Officer Cha as they approach the front of the building. There is a male wearing a black ball cap, purple sweater and blue jeans standing by the door. The male said, "The other side, the other side." The male then

leads Officer Dahir and Officer Cha into the building. Once inside there is another person standing inside. This person is wearing a white sweatshirt and sweatpants; his hands are raised in the air. On the floor near him is a black semi-automatic handgun. Some can be heard saying, "Gun, gun."

- At 05:07:14, Officer Dahir says to the males, "Watch out, Where is he?" Officer Dahir continues to follow officer Cha inside the building as another individual comes into view. This person is seen wearing a black jacket and blue jeans; his hands are also raised in the air. The individual points toward Mr. Xiong and said, "Right there."
- At about 05:07:20, Officer Dahir moves to the side of Officer Cha and approaches Mr. Xiong. Officer Dahir yells at Mr. Xiong, "Drop the knife." There is a male and female standing next to Mr. Xiong. Officer Dahir raises his rifle and points it in the direction of Mr. Xiong. Mr. Xiong turns slightly to look in the direction of Officers Dahir and Cha. Officer Dahir continues to give commands to Mr. Xiong saying, "Drop the knife." Officer Dahir's rifle is covering his body-worn camera, taking Mr. Xiong out of the camera's field of view.
- At 05:07:25, Officer Dahir lowers his rifle and Mr. Xiong comes into camera view. Mr. Xiong walks away from Officers Dahir and Cha. Officer Dahir transitions his rifle slightly to the person standing with Mr. Xiong. The individual's right hand is seen in their pocket. Officer Dahir yells, "Get your hands out of your pocket." Officer Dahir then transitions away from the individual and continues to walk toward Mr. Xiong. His rifle continues to be in front of his body-worn camera obstructing the camera's view.
- At 05:07:31, Officer Dahir rounds the corner and Mr. Xiong comes into view. Officer Dahir points his rifle toward Mr. Xiong and says "Drop...hey, get your hands out of your pocket." Mr. Xiong fails to respond and is fumbling with his keys attempting to open an apartment door. An officer is heard yelling, "On the ground."
- At 05:07:37, Officer Dahir moves to the right and uses the wall as cover.
- At 05:07:40, Mr. Xiong successfully opens the apartment door and starts to enter the room. An officer is heard yelling, "Hey, drop the knife."
- At 5:07:43, Mr. Xiong, walks into the room and an officer is heard yelling, "Don't let him in." Officer Dahir charges after Mr. Xiong and tries to kick the door open, but he is unable to kick it in.
- At 05:07:45, Officer Cha opens the door.
- At 5:07:46, Officer Dahir yells, "Hey."
- At 05:07:48, Mr. Xiong comes into view in the doorway and Office Dahir yells "stop" at him. Mr. Xiong's body is slightly canted to his side as he reaches toward his back with his right hand. Mr. Xiong pulls out an object and places it in front of his body. Mr. Xiong then grabs the object with his other hand and points the object at Officer Dahir.
- Officer Dahir's rifle light was pointed directly at the object; the glare from his light makes it difficult to identify the object. The object was later determined to be a knife based on Officer Cha's body-worn camera footage.
- At 05:07:49, Mr. Xiong begins to walk toward Officer Dahir.

- At 05:07:50, Officer Dahir, yells “Bring it back,” as he begins to retreat away from Mr. Xiong. Mr. Xiong continues to advance toward Officer Dahir, and Officer Dahir fires several rounds consecutively with his rifle at Mr. Xiong.
- At 05:07:52, Officer A Dahir backs out of the hallway and Mr. Xiong falls to the floor, landing on his hands and knees. Mr. Xiong continues to hold onto the knife in his left hand. Officer Dahir yells “Stop” at Mr. Xiong.
- At 05:07:55, Officer Dahir reaches across with his left hand, across his body-worn camera, toward his radio. He then broadcasts “Shots fired, shots fired,” over the radio. Several other officers can be heard yelling “Get on the ground.”
- At 05:07:56, Officer Dahir moves his left hand back to his rifle and Mr. Xiong comes back into view. Mr. Xiong is on his knees, but his hands are no longer trying to hold him up. Mr. Xiong’s body becomes limp, and his legs extend out as his body lays flat on the floor face down. Officers give Mr. Xiong commands, “On the ground, on the ground now.”
- At 05:08:03, Officer Dahir broadcasts over the radio, “start medics.” Officer Dahir continues to keep his rifle pointed at Mr. Xiong while another officer can be heard saying “stop, stop, stop,” while Officer Dahir says, “Don’t move.”
- At 05:07:11, an officer can be heard saying “He still has the knife,” an officer can be heard saying “Move your hands away,” while another officer can be heard saying “Get your hands on the wall.”
- At 05:08:29, an officer says, “Abdi, stay back.”
- At 05:08:38, Officer Dahir is removed from the scene.
- At 05:10:16, an officer is heard asking “Who fired shots? Abdi?”
- At 05:10:20, Officer Dahir was removed from the apartment building.
- At 05:10:31, an officer asked Office Dahir if anyone else “fired,” and Officer Dahir replied, “I don’t think so, no.” Officer Dahir remains outside of the apartment with another officer who is standing by him.
- At 05:12:12, a SPPD sergeant walks outside and stand with Officer Dahir.
- At 05:13:25, Officer Dahir turns his body-worn camera off.

2. Officer Noushue Cha:

The following description is of the sequence of events as captured on Officer Cha’s body-worn camera during this incident.

The video date is 02/11/2023 | Video start time is 4:57:39 PM | Video end time is 5:22:05

- At 4:57:39 Officer Cha is sitting in the front passenger seat and his partner is driving the squad car. There is no audio for about 30 seconds.
- At 04:58:10, Officer Cha’s audio is turned on. The squad’s siren can be heard. Cha’s partner can be seen driving him and Cha to the scene.
- At 05:05:51 Officer Cha and his partner arrive on scene. They park their squad car behind another SPPD police department squad car. Officer Cha exits the vehicle and walks toward SPPD Officer Dahir. Officer Dahir looks at Officer Cha and says,

“Someone want to go Taser?” As officers walk toward an apartment building, Officer Cha says, “I have a taser.”

- At 05:06:42, Officers Cha and Dahir and other officers arrive at an apartment building. Officer Dahir enters the building via first door, Officer Cha follows behind him and both walk up to the second door. They try to open it, but it is locked.
- At about 05:06:50, Officer Cha and his partners turn around and exit the building; they run toward a different building. Yelling can be heard in the background, but it is muffled.
- At 05:07:06, Officer Cha gets closer to the building; there are several people in front of the building. Someone says, “Please hurry.” A female can be seen carrying an infant car seat, there is another female holding an infant that’s clutched to her chest, and there are also two juveniles and another female standing next to them.
- At 5:07:09, Officer Cha approaches the front door of the building; there is a male wearing a black ball cap, wearing a purple sweater and blue jeans standing by the entrance of the door. The male says to Officer Cha “The other side, the other side.” The male then leads Officer Cha into the building where there is another individual inside. That individual is a male wearing a white sweatshirt and sweatpants and is seen with his hands up in the air. On the floor near this person is a black semi-automatic handgun. Someone can be heard saying “Gun, gun!” As Officer Cha continued to make his way inside the building, another person comes into view. This person is wearing a black jacket and blue jeans; their hands are also raised in the air. Someone can be heard saying “Where is he?” and this person replies “Right, there” as he points with his right hand toward Mr. Xiong.
- At 05:07:20, Officer Cha begins to approach Mr. Xiong. Officer Cha yells at Mr. Xiong. “Hey, drop the knife.” There is a male and female standing next to Mr. Xiong. Mr. Xiong turns and walks away from Officer Cha, ignoring his commands.
- At 05:07:22, Officer Cha can be seen raising his Taser; it’s yellow in color. The Taser is in his right hand, and he points it at Mr. Xiong. Mr. Xiong continues to walk away from Officer Cha and his partners, not responding to commands.
- At 05:07:23, Mr. Xiong stops walking and turns his body slightly toward Officer Cha and other officers. An officer is heard giving the command “Drop the knife.” Mr. Xiong extends his arms outward and to his sides, exposing the palms of his hands. His hands are empty.
- At 05:07:25, Mr. Xiong drops his arms and hands back down to his sides and continues to walk away from officers and into a hallway. Officer Cha uses his left hand to point at Mr. Xiong and says “Hey, stop walking, come here.” Another officer is heard saying “Get your hands out of your pocket.”
- At 05:07:28, Mr. Xiong turns into the hallway and disappears out of view. Officer Cha says, “Come here,” as he and other officers walk after Mr. Xiong.
- At 05:07:31, Officer Dahir rounds the corner and Mr. Xiong appears on camera. Mr. Xiong is in front of an apartment door. He has keys in his hands and is looking for a key to open the door. Officer Dahir is heard yelling “Drop, hey, get your hands out of your pocket.”

- At 05:07:37, Officer Cha moves his Taser from his right hand to his left hand. Commands are given to Mr. Xiong, but he is not looking at officers and is not acknowledging their commands as he continues to try and open the apartment door.
- At 05:07:41, Mr. Xiong opens the door. Officers Cha and Dahir walk after him and continue to yell commands to Mr. Xiong to “Drop the knife.”
- At 05:07:43, Mr. Xiong enters the apartment, and an officer is heard saying “Don’t let him in.” The door to the apartment closes behind Mr. Xiong. Officers Cha and Dahir charge after Mr. Xiong.
- At 05:07:45, Officer Cha uses his right hand to pull the door lever. The door is opened, and Mr. Xiong is seen standing behind the door. Mr. Xiong reaches toward his back with his right hand.
- At 05:07:47, Officer Cha retreats and an officer is heard saying “Stand back.” Mr. Xiong is seen retrieving a large knife from his back with his right hand.
- At 05:07:49, Mr. Xiong places the knife in front of his body. The tip of the knife is facing at officers. Mr. Xiong then places his other hand on the handle of the knife.
- At 05:07:50, Officer Dahir yells, “Bring it back” and begins to retreat away from Mr. Xiong. Mr. Xiong continues to advance toward the officers. Officer Cha deploys his Taser, firing it at Mr. Xiong.
- Between 05:07:50 and 05:07:52, a total of 4 gunshots can be heard being fired. As Officers Cha and Dahir back out of the hallway, Mr. Xiong falls to the floor on his hands and knees. Mr. Xiong continues to hold onto the knife with his left hand. Officer Dahir retreats to the main area of the hallway and yells “Stop” at Mr. Xiong.
- At 05:07:54, several officers can be heard telling Mr. Xiong to get on the ground as Mr. Xiong continues to remain on his hands and knees.
- At 05:07:57, officers can be heard radioing to dispatch that “Shots were fired.” Officer Cha is seen retreating away from the hallway. Mr. Xiong disappears out of view.
- At 05:08:07, officers are standing in the hallway; an officer is heard saying that Mr. Xiong still has the knife. Several commands are given to Mr. Xiong to move his hands.
- At 05:08:26, officers request medical aid for Mr. Xiong.
- At 05:08:43, Officer Cha drops his Taser on the floor in the hallway.
- At 05:09:01, Officer Cha and others approach Mr. Xiong as he lay on the floor face down. An officer grabs Mr. Xiong’s hands and places them behind Mr. Xiong’s back. Officer Cha reaches underneath Mr. Xiong’s body, grabs the knife and moves it away from Mr. Xiong.
- At 05:09:14, Officer Cha and other officers roll Mr. Xiong over and onto his back. Blood can be seen on Mr. Xiong’s body. An officer is heard asking for a trauma kit.
- At 05:09:36, Officer Cha pulls Mr. Xiong’s shirt up and says out loud to another officer, “Start CPR.”
- At 05:09:45, Officer Cha backs away from Mr. Xiong. Officers can be seen putting on latex gloves. Officer Cha walks out and away from Mr. Xiong and into the apartment lobby. Officer Cha requests a trauma kit. Officer Cha remains in the lobby and out of Mr. Xiong’s view.

- At 05:10:43, Officer Cha runs to the building entrance and meets two SPPD sergeants. Officer Cha walks these sergeants inside the building.
- At 05:11:21, Officer Cha's camera captures an officer telling the two sergeants that Officer Dahir was the shooter. Officer Cha is heard saying "I deployed Taser." He then remains in the hallway.
- At about 05:12:40, Officer Cha walks outside and retrieves a trauma kit from an officer who is seen walking up to the building. Officer Cha then runs back into the building to where Mr. Xiong is located.
- At 05:13:00, officers can be seen performing CPR on Mr. Xiong. Officer Cha opens the trauma kit and gives gauze to an officer so it can be applied to Mr. Xiong.
- At 05:13:22, Saint Paul Fire Department personnel arrive on scene and assist officers in providing medical aid to Mr. Xiong.
- At 05:14:46, Officer Cha tells a sergeant that he deployed his Taser.
- At 05:15:07, an officer tells the sergeant that a "round" went through the window of Mr. Xiong's apartment.
- At 05:15:34, an officer walks up to Officer Cha and says he almost "fired," but Officer Cha and Officer Dahir were in front of him.
- At 05:19:10, a sergeant asks Officer Cha to exit the building.
- At 05:22:05, Officer Cha turns his body-worn camera off.
- End of Video.

3. Officer Perez-Estrella:

The following description is of the sequence of events as captured on Officer Perez-Estrella's body-worn camera during this incident.

The video date is 02/11/2023 | Video start time is 04:57:33 PM | Video end time is 05:23:06

- At 04:57:43, Officer Perez-Estrella is seen driving his squad car. There is no audio for the first 30 seconds of the video.
- At 04:58:03, the audio turns on and the squad's siren can be heard. Officer Perez-Estrella continues to drive to the scene with his emergency lights and sirens activated.
- At 05:05:57, Officer Perez-Estrella arrives on scene and parks his squad car. He grabs his patrol rifle and exits the vehicle and walks toward an apartment building.
- At 05:06:42, two SPPD officers can be seen opening the apartment door and entering the building. Officer Perez-Estrella walks up and stands outside.
- At 05:06:49, an officer can be heard saying "Hey, he's over here." Officer Perez-Estrella looks in the direction of the officer and runs toward a different building.
- At 05:07:02, Officer Perez-Estrella's body-worn camera turns off.
- At 05:07:03, Officer Perez-Estrella's camera turns back on; he is still running toward the second apartment building. There is no audio for the first 30 seconds of the video.
- At 05:07:10, Officer Perez-Estrella approaches the second apartment building. There are people standing outside. A female carrying an infant car seat can be seen. There

is another female carrying an infant holding the child to her chest. Two juveniles can be seen standing next to the females. There is a third female also standing out front.

- At 07:07:14, the audio is turned on.
- At 07:07:16, Officer Perez-Estrella follows officers into the apartment building. The palm of Officer Perez-Estrella comes over his body-worn camera and obstructs the lens for a short period of time.
- At 05:07:26, Officer Perez-Estrella enters the lobby of the apartment. The officers in front of him can be seen following an individual later identified as Mr. Xiong.
- At 07:07:36, an officer can be heard saying "Don't...don't let him in." Two officers can be seen charging at Mr. Xiong, kicking at an apartment door.
- At 05:07:45, an officer can be seen opening the door using the door handle. Mr. Xiong is seen standing behind the door.
- At 05:07:47, Officer Perez-Estrella yells, "Hey, he's got a knife, stand back," Officer Perez-Estrella is seen retreating.
- At 05:07:50, an officer can be heard saying, "Stop, bring it back," and is seen retreating. Officer Perez-Estrella continues to retreat, and four gun shots can be heard being fired. Officer Perez-Estrella's camera did not capture the shooting, just the sounds of the gunshots.
- At 05:07:57, an officer can be heard saying over the radio, "Shots fired."
- At 05:08:01, Officer Perez-Estrella captures Mr. Xiong lying on the floor face down.
- At 05:08:08, Officers are seen standing in the hallway. Officer Perez-Estrella tells the other officers that Mr. Xiong still had the knife in his possession. He then gives commands to Mr. Xiong to move his hand away from the knife.
- At 05:09:01, the officers quickly plan to approach Mr. Xiong to recover the knife from him. Officer Perez-Estrella stands by and provides cover to them with his rifle.
- At 05:09:12, Officer Perez-Estrella radios, saying, Mr. Xiong has been detained and that officers had moved a knife away from him.
- At 05:09:24, Officer Perez-Estrella radios that he is beginning CPR on Mr. Xiong.
- At 05:09:32, Officer Perez-Estrella unslings his rifle and places it on the floor. He then picks his rifle up and hands it to another officer. He then kneels down next to Mr. Xiong and assists other officers with giving Mr. Xiong medical aid.
- From 05:11:26 to 05:15:25, Officer Perez-Estrella helps other officers provide medical aid to Mr. Xiong.
- At 05:15:26, Officer Perez-Estrella stands up and walks away from Mr. Xiong.
- At 05:19:05, Officer Perez-Estrella exits the building in the direction of a sergeant.
- At 05:23:06, Officer Perez-Estrella turns his body-worn camera off.

4. Officer Sean McManus:

The following description is of the sequence of events as captured on Officer Sean McManus's body-worn camera during this incident.

The video date is 02/11/2023 | Video start time is 05:07:41 PM | Video end time is 5:50:56

- At 05:07:41, Officer McManus sits in the driver's seat of his squad car. There is no audio for the first 30 seconds of the video.
- At 05:08:09, Officer McManus puts his vehicle in drive and begins driving to the scene with his lights and sirens activated.
- At 05:10:52, Officer McManus arrives on scene and parks behind an already parked Saint Paul Police Department (SPPD) squad car. Officer McManus exits his squad car and runs toward an apartment building.
- At 05:11:32, Officer McManus enters the apartment and runs down the hallway where Mr. Xiong is lying on the ground. Officers can be seen giving Mr. Xiong CPR.
- At 05:12:14, Officer McManus and a SPPD officer enter Mr. Xiong's apartment checking to see if there is anyone inside. There is no one there; the apartment is empty.
- At 05:12:23, Officer McManus puts on latex gloves.
- At 05:12:28, Officer McManus tells an officer to switch; he then begins to take over CPR on Mr. Xiong. Blood can be seen on the carpet.
- At 05:13:44, Saint Paul Fire Department personnel arrive on scene and take over CPR. Officer McManus remains in the hallway, giving Mr. Xiong medical aid until about 05:25:48.
- At 05:28:41, Officer McManus removes his latex gloves. The gloves are soiled with blood.
- At 05:29:03, Officer McManus folds his business card in half and lays it on the floor next to a spent cartridge and then walks into the lobby of the apartment.
- At 05:35:04, Officer McManus is given wipes to clean his hands.
- At 05:36:34, Officer McManus takes a call on his smartwatch. He tells the person who calls him that he is still on scene.
- At 05:39:15, Officer McManus enters his information into the crime scene log. Officer McManus remains inside the building lobby. He then turns his body-worn camera off at about 05:50:56.

D. Firearms and Ballistics Evidence

Mr. Xiong was found with a knife. The knife is known as a traditional Hmong Knife which was used in Southeast Asia and a common tool of the Hmong people. The particular knife Mr. Xiong wielded had a wooden handle and a pointed metal blade. The blade length measured approximately 12 inches long. Inside Mr. Xiong's apartment, investigators located three

additional Hmong Knives of similar shape, color, length, and style. These knives were found in Mr. Xiong's kitchen drawer. The drawer is located near the entrance door to Mr. Xiong's apartment.

BCA investigators collected five shell casings from the scene. Analysis and testing showed that the casing matched and were determined to be fired from Officer Dahir's patrol rifle. The rifle is a .223 caliber black Nordic Components Model NC-15 Remington-style assault rifle with serial number 02588. No other weapons were fired at the scene.

E. DNA

DNA analysis was conducted on the knife that was wielded by Mr. Xiong. The BCA Forensic Laboratory determined that there was a single source of male DNA located on the knife. The results of the DNA analysis showed that Mr. Xiong's DNA matched that of the DNA located on the knife.

F. Autopsy

Ramsey County Medical Examiner Kelly Mills, M.D. performed the autopsy on the body of Mr. Xiong. Dr. Mills determined that Mr. Xiong's death was caused by multiple gunshot wounds.

Mr. Xiong sustained 5 gunshot wounds. There are gunshot wounds on his chest, abdomen, right forearm, and left thigh. Also located was a 1-inch abrasion on both sides of Mr. Xiong's forehead. Additionally, there was a ¾-inch abrasion found on the right cheek of his face. There was a puncture wound on the back of Mr. Xiong's right wrist due to a sustained Taser probe. There was a one-inch abrasion located on his left knee and a 1 5/8-inch blue contusion on the back of his left arm elbow region. Also located was a 1-inch blue contusion on the back of Mr. Xiong's right upper arm.

G. Other Relevant Evidence

1. Medical Intervention for Mr. Xiong:

According to a Prehospital Report from the Saint Paul Fire Department, lifesaving medical treatment was provided to Mr. Xiong on scene. At 5:08 p.m. medics were requested and dispatched to the scene. At 5:10 P. M. officers began providing CPR to Mr. Xiong. At 5:13 p.m. Saint Paul Fire personnel arrived on scene to provide medical assistance to Mr. Xiong. At 5:26 p.m., Mr. Xiong was pronounced deceased, and his body was transported to the Ramsey County Medical Examiner's Office.

2. Officer Dahir's Training Records:

Officer Dahir has been a licensed peace officer employed with the SPPD since October 11, 2021. Prior to employment as a licensed peace officer, Officer Dahir was employed by the SPPD from September 2019 through October 2021 as a Parking Enforcement Officer. Among the many training classes taken by Officer Dahir since he began his employment with the

SPPD, include classes in use of force, active shooter, firearms, patrol techniques, diversity, and mental health training.

BCA investigators interviewed SPPD Commander Eric Vang-Sitcler, who supervises the SPPD training unit and firearms range. This unit is responsible for providing use of force, and de-escalation training to over 600 sworn SPPD peace officers. In response to a question whether it is common for SPPD to train officers in situations like this to have one officer with a lethal option and another officer with a less lethal option, Commander Vang-Sitcler said the following:

“...depending on the amount of time you have to prep for this, we encourage our officers, any time that you think to even have to use force, especially if ... deadly force might have to be involved, to create what we call a ‘contact team’, or an ‘arrest team,’ where you would have, and in this situation there were only two of them but we would have up to 6 or 10 people it could be, where there’s always an availability to de-escalate from that lethal force down to a less lethal or even non-lethal force. So absolutely it is, and it’s not just Saint Paul, it’s trained everywhere so that, that a group of cops as a unit can have different options of force to be used on that specific incident.”

3. Expert Opinion – Jeffrey Noble:

To help us better understand whether the tactics and use of deadly force by Officer Dahir against Mr. Xiong was objectively reasonable under the specific facts and circumstances presented in this matter, the Ramsey County Attorney’s Office and Attorney General’s Office sought the opinion and perspectives of the following independent and highly experienced retired peace officer who is an expert in police training, tactics, and use of force.

a. *Jeffrey Noble*

Mr. Noble was a licensed peace officer in California for 28 years, rising to the rank of Deputy Chief of Police prior to his retirement in 2012. He is a widely published author of articles, chapters for textbooks and a textbook on police practices, tactics, and use of force. A copy of his letter dated February 14, 2024, describing his observations and perspectives of the relevant evidence related to the tactics and use of force used in this matter, are attached to this Memorandum as “Attachment A.”

While the opinion provided to us by Mr. Noble describes his own observations and perspectives in detail, and is deserving of its own independent, close reading, we note here for summary purposes only, that based on his review of the relevant evidence, Mr. Noble concluded that the tactics and use of deadly force used by Officer Dahir against Mr. Xiong was objectively reasonable and consistent with generally accepted police practices.

IV. LEGAL ANALYSIS AND RECOMMENDATION

A. Applicable Law

Minnesota Statute, Section 609.066, subdivision 2(a)(1)(i)-(iii) and (2), provides that the use of deadly force¹ 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 apparent death or great bodily harm, provided that the threat:

(i) can be articulated with specificity by the law enforcement officer;²

(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; or

(2) to effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or

(3) to effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in clause (1), items (i) to (ii), unless immediately apprehended.”

¹ Minnesota Statutes, Section 609.066, subdivision 1, defines “deadly force” as “force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm. The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.”

² An Order dated December 17, 2021, from Chief Judge Leonardo Castro, Second Judicial District, in Case No. 62-CV-21-3582, Minnesota Chiefs of Police Assoc., et al.v. Gov. Timothy Walz, et al., struck the words “by the law enforcement officer,” as unconstitutional.

Additionally, Minn. Stat. Sec. 609.066, subd. 2(b), also requires that:

“...[a] peace officer shall not use deadly force against a person based on the danger the person poses to self 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 the person does not pose a threat of death or great bodily harm to the peace officer or to another under the threat criteria in paragraph (a), clause (1), items (i) to (iii).”

In 2020, the Minnesota Legislature, pursuant to Minn. Stat Section 609.066, Subd. 1a(1)-(4), declared the following to be the legislative intent regarding the authorized use of deadly force by peace officers:

“(1) that the authority to use deadly force, conferred on peace officers by this section, is a critical responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law;

(2) as set forth below, it is the intent of the legislature that peace officers use deadly force only when necessary in defense of human life or to prevent great bodily harm. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case;

(3) that the decision by a peace officer to use deadly force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using deadly force; and

(4) that peace officers should exercise special care when interacting with individuals with known physical, mental health, developmental, or intellectual disabilities as an individual's disability may affect the individual's ability to understand or comply with commands from peace officers.”

When interpreting the meaning of a statute, a court's primary goal is to “interpret and construct laws so as to ascertain and effectuate the intention of the legislature.” Lietz v. Northern States Power Co., 718 N.W.2d 865 (2006)

To bring charges against a peace officer for using deadly force in the line of duty, a Minnesota prosecutor must be able to prove beyond a reasonable doubt that the use of force was not justified.³

The United States Supreme Court has recognized in the case of Tennessee v. Garner, 471 U.S. 1 (1985), that the use of deadly force by a peace officer is justified where the officer has probable cause to believe that the suspect poses a threat of serious bodily harm either to the officer or to others. In Graham v. Connor, 490 U.S. 386 (1989), the Court further held that an objective reasonableness standard should be used to evaluate an officer’s use of force. The determination of reasonableness requires “careful attention to the facts and circumstances of each particular case.”

In Graham, the Court outlined a non-exhaustive list of factors for balancing an individual's rights versus an officer's rights. The Court identified several factors, including: 1) the severity of the crime at issue; 2) whether the suspect poses an immediate threat to the safety of the officers or others; and 3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight. The Court also made clear that whether an officer used reasonable force “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” The Court held that allowance must be made for the fact the law enforcement officers are often required to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. See also, City and County of San Francisco v. Sheehan, 575 U.S. 600, 615, 135 S.Ct. 1775, 1776-77 (2015).

B. Analysis and Recommendation – The Use of Deadly Force by Officer Dahir Against Mr. Xiong Was Justified Under Minnesota Law

After carefully considering both the evidence in this case, and the objective legal standard recognized by the U.S. Supreme Court and Minnesota law, we believe, for the following reasons, that the use of deadly force by Officer Dahir against Mr. Xiong was objectively reasonable under each of the situations set forth in Minnesota Statutes, Section 609.066, subdivisions 2(a)(1)(i)-(iii) and (2).

³ RCO charging guidelines provide that charges should only be filed in a criminal case “when credible admissible evidence creates a reasonable probability of obtaining a conviction at trial.” This is similar to both the American Bar Association’s Minimum Requirements for Filing and Maintaining Criminal Charges 3-4.3(a) (“A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice”) and the National District Attorneys Association Charging Standard 4-2.2 (“a prosecutor should file charges that...[the prosecutor] reasonably believes can be sustained by admissible evidence at trial”).

1. Minnesota Statutes, Section 609.066, Subdivision 2(a)(1)(i)-(iii)

Under this provision of Section 609.066, “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;
 - (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;”

Based on the evidence provided to us, we find that the following circumstances were known to, and experienced by Officer Dahir, before he shot Mr. Xiong.

Prior to Officer Dahir exiting his clearly marked SPPD police vehicle, the verbal and written CAD communications provided by the 911 dispatcher to Officer Dahir and his responding SPPD colleagues, included the following information:

- That an “Asian male, 50-years-old, wearing an old dirty jacket, and brown pants,” had been “kicked out of a party” being held in an apartment community room at 160 Western Avenue, and had “now returned with a knife and was threatening people with the knife.”
- That Sergeants Kruse and Welters had approved the use of less lethal munitions.
- That the initial 911 call from B.W. was “...secondhand info from the [complainant’s] son who is in the party at the community room...no apparent time delay...[complainant] advised to have son call 911 to give updates.”
- That Officer Dahir requested a description of the clothing being worn by Mr. Xiong.
- That a “[n]ew caller saying male with machete in the party room on 1st floor M E 5’0” Asian/Male tan jacket purple shirt and he is waving the weapon.”
- That, the “[p]roblem changed from DOC – Disorderly Conduct to ASS – Assault by LAW.”
- That the “[m]ale no longer in the party room. [Complainant] does not know where the male is but believed to be in the building.”

In his written statement, Officer Dahir said that he both heard the above-referenced 911 dispatchers’ verbal communications and read the written CAD messages before exiting his vehicle. Officer Dahir’s statement is consistent with audio taken from his BWC, in which the verbal communications from the 911 dispatcher were audible while he was sitting in his vehicle. Officer Dahir’s statement is also consistent with video taken from his BWC, showing him scrolling through those same 911 CAD messages on his in-vehicle computer screen.

Officer Dahir was the first SPPD officer to arrive at the apartment complex. While Officer Dahir was seated in his vehicle awaiting SPPD back-up, a man in a red plaid jacket is seen approaching him to tell him about the situation involving Mr. Xiong. Officer Dahir is heard responding to the

man that he is aware of the situation and is awaiting back-up. Officer Dahir also refers to this encounter in his written statement.

The above-referenced evidence shows that Officer Dahir was aware that a man matching the description of Mr. Xiong, was threatening people with a knife at a party in the community room. He was also aware that the description of that knife was soon revised by dispatch and referenced as “a machete,” and that Mr. Xiong was waving that weapon at people in the room. Before exiting his vehicle, Officer Dahir also waited for back-up, and sought further confirmation on a description of the clothing worn by Mr. Xiong.

After exiting his vehicle with his rifle, Officer Dahir is heard asking his colleagues if one of them wanted to arm themselves with their Taser. Officer Cha offered to deploy his Taser. According to the officer in charge of use of force training, SPPD Commander Vang-Sitcler, Officer Dahir’s request was consistent with the SPPD training protocol that encourages having an officer with a less lethal option, and another officer with a lethal option, in situations like this one.

Video and audio taken from body-worn camera footage also shows that as Officers Dahir and Cha, and their SPPD colleagues were approaching the front door on foot, they were being urged by A.K. and K. J. M. to hurry in their response, thereby creating a reasonably heightened sense of urgency in the minds of the officers just prior to their entry into the building. Upon their entry into the vestibule area, this sense of urgency continued when they encountered R.H. Sr., R.H. Jr., and J.C.H., who animatedly directed them toward the suspect, Mr. Xiong, who was standing on the far-side of the large lobby. Mr. Xiong matched the physical description of the suspect who was wearing a purple shirt, that was previously shared with Officer Dahir.

Both officers ordered Mr. Xiong three times to “Drop the knife!” Mr. Xiong is seen walking away from the officers but stops after the third order to “Drop the knife! Where is it?” and he raises both arms to his sides with his palms facing upwards, as if he understands their command and to show them that he does not have a knife. Mr. Xiong then drops his arms, puts his right hand in his right front pants pocket and continues walking away from the officers despite their ordering him to “Stop walking! Come here! Hey, come here!!”

Mr. Xiong makes a left turn to enter the narrow hallway leading toward his apartment and the officers lose sight of him for approximately 6 seconds, as they continue to loudly order him to “Come here!” Officer Dahir, armed with his rifle, is the first officer to reach the beginning of the hallway and as he turns the corner, he sees Mr. Xiong standing next to an apartment door in profile, facing the wall to the left of the door, with both of his hands together as if he is holding something. Officer Dahir loudly yells “Hey, get your hands out of your pockets! Officer Cha, who is holding his Taser in his left hand, is slightly behind and to the left of Officer Dahir and sees Mr. Xiong, who is now facing the door with his right hand on the door handle. Officer Cha loudly orders Mr. Xiong to “Hey, drop down!”, while Officer Dahir loudly yells to Mr. Xiong “On the ground. Get on the ground now!!” Another voice is heard yelling “Drop the knife!”

Mr. Xiong instead opens the door and enters the apartment. He is seen looking back toward the officers as he closes the apartment door. The officers, who had no knowledge that Mr. Xiong was a resident of the building, let alone a tenant of that apartment, are heard saying “Don’t, don’t let him in!” as they quickly rush to the door to prevent Mr. Xiong from entering the apartment. A written statement provided by Officer Dahir said that “we could not let the male inside the door due to not knowing who else was in the room and the possibility of the male hurting somebody else in the room.” Both officers kick the door as it closed but were unsuccessful in opening it. Officer Cha then turned the door handle with his right hand and pushed the door open.

Immediately after opening the door, video and audio taken from Officer Cha’s BWC show that Mr. Xiong, while approximately three feet inside the threshold of his apartment, reaches for something behind his back with his right hand. Officer Cha is heard saying “Don’t! Stop!” Officer Dahir is shown slightly leaning closer to Officer Cha to better see inside the apartment, and he also notices Mr. Xiong’s right hand hidden from view. Both officers suddenly see Mr. Xiong emerge from behind the door initially holding a large knife with his right hand on the handle. Officer Dahir loudly yells “Stop!” and “Bring it back!” while Officer Cha is heard saying “Get back!” Standing closely behind Officers Dahir and Cha are SPPD Officers Lamb and Vang.

Mr. Xiong is then seen quickly advancing toward the officers while holding the handle of a long-bladed knife with both hands in front of his body with the tip of the knife blade facing the officers as the four officers began to quickly retreat down the long, narrow hallway away from the door. With the officers only a few feet away from the advancing Mr. Xiong, both officers reasonably responded by simultaneously and rapidly firing their respective weapons at Mr. Xiong. Officer Cha fired his two-pronged Taser, with only one of the prongs attaching to the back of Mr. Xiong’s wrist, and Officer Dahir fired his rifle five times, with all five rounds striking Mr. Xiong causing his death.

Additionally, according to independent police training and use of force expert, Jeffrey Noble, Officer Dahir’s use of deadly force against Mr. Xiong was objectively reasonable under Minnesota law and consistent with generally accepted police practices. Specifically, and most relevant to our review of Officer Dahir’s use of deadly force, Mr. Noble opined as to the following issues:

1) 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 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.”

2) 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.”⁴

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.

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 he 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.

⁴ See, SPPD policy section 246.00 – Response to Resistance or Aggression.

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 Officers Dahir and Cha's lives were in 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 but 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 to the environment and situation, specifically with regard to the individual's proximity to the potential target or targets. Demonstratable intent refers to the individual's perceived 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, demonstratable 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."

3) *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.”⁵ 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.”⁶ 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.”⁷ “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.”⁸ 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 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.

⁵ Arnold Binder and Peter Scharf, *The Violent Police–Citizen Encounter*, 452 ANNALS OF AN, ACAD, POL. & SOC. SCI. 116(1980).

⁶ Seth W. Stoughton, Jeffrey J. Noble, and Geoffrey P. Alpert, *EVALUATING POLICE USES OF FORCE*, New York University Press (2020) at 227.

⁷ 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).

⁸ Seth W. Stoughton, Jeffrey J. Noble, and Geoffrey P. Alpert, *EVALUATING POLICE USES OF FORCE*, New York University Press (2020) at 35.

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.”

For all the foregoing reasons, it is our opinion that use of deadly force by Officer Dahir was objectively reasonable to stop the deadly threat posed by Mr. Xiong, and thus is justified based on the totality of the circumstances as both visually and verbally evidenced from the video and audio of the BWCs worn by Officer Dahir and his fellow responding officers. That same video and audio evidence is corroborated by the written statements provided by Officers Dahir, Cha, Lamb, and Perez-Estrella.

The video clearly shows Mr. Xiong holding the knife in an aggressive manner as he assumes a slightly crouched position and begins to quickly emerge through his apartment door toward the officers, despite their continued orders for him to stop. Officer Dahir, and his SPPD colleagues had no objective reason to believe that Mr. Xiong did not understand the multiple orders given to him by officers to “stop” and “drop the knife.” To the contrary, when ordered 3 times in the lobby by Officer Dahir and his colleagues to “Drop the knife!” Mr. Xiong briefly stopped and displayed his hands as if to show the officers that he understood their orders and was not in possession of the knife.

For the foregoing reasons, we believe that Officer Dahir's use of deadly force against Mr. Xiong was necessary, and thus justified, under Minn. Stat. § 609.066, subd. 2(a)(1)(i-iii).

2. Minnesota Statutes, Section 609.066, Subdivision 2(a)(2) and (b)

Officer Dahir and the other SPPD officers responded to two 911 complaints stating that an Asian male, approximately 50 years old and 5'0" tall wearing a purple shirt, who after being kicked out of a party being held in the community room of an apartment building, returned to the party with a knife and was threatening people with it. Subsequent information shared with the officers, including Officer Dahir, said that man was in possession of a "machete" and was "waving it."

As Officer Dahir and his colleagues jogged toward the building, they were excitedly urged by A.K. and K.J.M. to hurry because a man in the building has a machete. The foregoing information, combined with their own professional observations of the chaotic scene both immediately outside the building and inside the lobby, could reasonably be understood by the officers to mean that a violent felony incident involving a man wielding and threatening people in the building with a machete was occurring. Upon identifying Mr. Xiong as the suspect, the officers issued numerous verbal commands for him to stop and drop his knife, to which Mr. Xiong did not comply. Seconds later, video from the body-worn cameras worn by Officers Dahir and Cha shows Mr. Xiong armed with a long-bladed knife aggressively advancing toward the officers.

For these reasons, we also believe that the use of deadly force by Officer Dahir in this matter was also necessary and thus justified under Minn. Stat. Sec. 609.066, subd. 2(a)(2).⁹

⁹ Finally, the decision by Officer Dahir to use deadly force against Mr. Xiong was not based on any known, or reasonably observed, acts or statements reflecting a "danger posed to self" by Mr. Xiong. Although there were post-incident statements provided to the BCA by V.Y. and K.C. where they each said that Mr. Xiong had previously expressed suicidal thoughts to them, that information was never shared with Officer Dahir or any of the other responding officers. Moreover, at no time during the incident did Mr. Xiong, either by his words or actions, express any intent to commit suicide or to otherwise harm himself. Accordingly, we also believe that Minnesota Statute Section 609.066, subd. 2(b) is not implicated in this case. Accordingly, the deadly force used by Officer Dahir was solely directed to stop the direct threat posed by Mr. Xiong against Officer Dahir and his fellow officers.