Case No. A22-0611

State of Minnesota
In Supreme Court

State of Minnesota,

Petitioner,

v.

Stephanie Louise Clark,

Respondent.

AMICI CURIAE BRIEF OF SEVEN GENDER VIOLENCE SCHOLARS IN SUPPORT OF RESPONDENT

ROBINS KAPLAN LLP

Christopher K. Larus (#226828)
Eric P. Barstad (#0398979)
Marcus A. Guith (#0399520)
Raoul Shah (#0399117)
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402-2015
(612) 349-8500

Attorneys for Amici Curiae Gender Violence Scholars

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Pursuant to Rule 129 of the Minnesota Rules of Civil Appellate Procedure, Amici—seven scholars whose research focuses on the study of intimate partner violence and the prevention of gender-based violence—respectfully submit this *amici curiae* brief in support of respondent, Stephanie Louise Clark, and affirmance of the opinion issued by the Minnesota Court of Appeals.[1]

INTEREST OF *AMICI CURIAE*

Amici are Professors Angela Hattery, Earl Smith, Leigh Goodmark, Claire Renzetti, Susan Miller, Ruth Fleury-Steiner, and Lisa Young Larance.[2] They are among the leading scholars in the United States on intimate partner violence and the criminalization of victims. As leading scholars in the areas of intimate partner violence, Amici seek to ensure that the judicial interpretation of the justifiable-taking-of-life defense accounts for the unique psychological and behavioral realities of intimate partner violence. Intimate partner violence is a complex phenomenon. It manifests in an escalating cycle of physical and psychological violence, with unique dangers and perceptions thereof that can be challenging for outside observers to apprehend.

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[1] No counsel for any party authored this brief in whole or in part. No party, aside from *amici curiae*, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Each scholar is appearing before the Court in his or her individual capacity, and not on behalf of any institution or organization with which they are affiliated. Brief biographies of Amici are included in Appendix A.

Amici respectfully submit that any interpretation of the term "imminent" in the context of intimate partner violence must account for the unique dynamics inherent in relationships marked by such violence. It should also reflect the broad consensus among scholars in the field that victims of intimate partner violence may have an actual, sincere, and reasonable belief that they are in imminent danger of death or great bodily harm based on the unique context of their individual situation, even if that danger may not appear "immediate," because of "the buildup of terror and fear which [has] been systematically created over a long period of time." *State v. Hundley*, 693 P.2d 475, 479 (Kan. 1985).

SUMMARY OF ARGUMENT

This appeal concerns the proper interpretation of jury instructions that articulate the justifiable-taking-of-life defense provided by Minnesota Statute § 609.065 (2020). In response to a note from the jury asking about the legal definition of the word "imminent," the trial court instructed the jury that "[t]o fear imminent great bodily harm or death means that the person must fear that such harm will occur immediately." *State v. Clark*, A22-0611, 2023 WL 2637490, at *2 (Minn. Ct. App. March 27, 2023). Shortly thereafter, the jury found the defendant, Ms. Clark, guilty of second-degree murder.

On review, the Minnesota Court of Appeals held that there was "no legal basis" for the trial court's supplemental instruction, and that it "materially

misstated the law" by equating "imminent" with "immediate." *Id.* at *3. The intermediate court explained that "given [the victim's] violent actions against [Defendant], the jury could have found that [Defendant] was in imminent danger of bodily harm even if such danger was not immediate." *Id.* at *4.

The Court of Appeals was correct. There is a considerable body of quantitative and qualitative research on the immediate and long-term impact of intimate partner violence and abuse, and the continued effect that such violence and abuse are capable of inflicting on a victim's state of mind during and between abusive episodes at the hands of a violent partner. The daily experience of living through the reality of a relationship marked by intimate partner violence informs victims' assessment of whether any given situation poses an imminent threat of death or great bodily harm. That context is therefore critical to the determination of whether an individual victim's actual and honest perception of such a threat is reasonable, even in circumstances where the threat may not appear "immediate" to outside observers. The highest courts of several other states have recognized the importance of context in assessing the reasonableness of actions taken by a victim of intimate partner violence. There is a firm basis in Minnesota's self-defense law to do the same.

In its ruling, the Minnesota Court of Appeals recognized that "[t]he Minnesota Supreme Court has not defined the term 'imminent' in the law of self-defense," and that it is "for the supreme court . . . to define that term."

Clark, 2023 WL 2637490, at *3. Amici agree and respectfully encourage this Court to adopt a definition of "imminent" that allows the jury to take account of the unique circumstances of a defendant charged for using force or deadly force against another. Those circumstances necessarily include the specific context and nature of the relationship between the defendant and the decedent and the consideration of all circumstances relating to the defendant's lived experience, which inform whether her belief that she was in imminent danger was reasonable. What is required is a definition of "imminent" that acknowledges the empirically supported realities pertaining to intimate partner violence, while continuing to provide a workable framework for self-defense analyses in a broader class of cases.

ARGUMENT

I. Any assessment of whether a victim of intimate partner violence acted reasonably in responding to a perceived "imminent" threat must take the complex context of such violence into account.

There is perhaps no circumstance where the phrase "context matters" rings truer than when a victim of intimate partner violence takes the life of her abuser. Such an action cannot be assessed as a single moment in time. Instead, it must be understood as being the ultimate result of a culmination of a long, and often very painful history that extends well beyond that single incident or even the moments immediately preceding it. The use of force or violence by a victim of intimate partner violence against her abuser can only

be understood in the entire context of the relationship. The State now appears to concede this point in the primary section of its brief, acknowledging that context is an important piece in assessing self-defense and justifiable-taking-of-life claims by defendants who have been victims of and survived intimate partner violence. (*See* App. Br. at 13).

Empirical research on intimate partner violence strongly endorses the need to consider the deeply contextual nature of intimate partner violence in assessing whether a threat was "imminent." Such research explains that "a woman's use of violence must also be understood in the context of the whole relationship, rather than in the context of the specific incident that occasions criminal justice intervention." Larance, L. Y., Kertesz, M., Humphreys, C., Goodmark, L., & Douglas, H. *Beyond the victim-offender binary: Legal and anti-violence intervention considerations with women who have used force in the U.S. and Australia.* Affilia: Feminist Inquiry in Social Work, 37(3), 466-486, at 470 (2022) (citation omitted). This is because "victims [of intimate partner violence] choose certain courses of action based on their assessments of how much danger they are in." Cattaneo, L. B., Bell, M. E., Goodman, L. A., & Dutton, M. A. *Intimate partner violence victims' accuracy in assessing their risk of re-abuse*. Journal of Family Violence, 22, 429-440, at 429 (2007). They do so based on the overall context of the relationship, drawing on past knowledge and experience.

Common-sense supports the notion that "over time victims [of intimate partner violence] might become sensitive to cues and signals that reflect their partner's mood and forecast his behavior. Through a history with this abuser, victims might also have a sense of how certain events are likely to influence him." *Id.* at 430-31.

When "imminent" is defined as "immediate," the consideration of whether a given threat was imminent becomes "divorced from the larger context of the parties' relationship," and robs the jury of an appropriate opportunity to consider both the defendant's actual belief that she was in imminent danger and the reasonableness of that belief. Larance, L. Y., Kertesz, M., et. al, *supra*, at 471 (citation omitted).

As other courts have recognized, a strict focus on immediacy "obliterates the nature of the buildup of terror and fear which had been systematically created over a long period of time." *State v. Hundley*, 693 P.2d 475, 479 (Kan. 1985). That strict focus fails to recognize the reality that "a woman's belief as to the imminence of death or serious injury might be affected by the context of abuse" as it has developed—and likely worsened—over the course of the relationship. Larance, L. Y., Goodmark, L., Miller, S. L., & Dasgupta, S.D. *Understanding and addressing women's use of force: A retrospective*. Violence Against Women, 25(1), 56-80 at 64 (2019). As such, assessing the reasonableness of a victim's response to a perceived imminent threat of death

or severe bodily injury requires understanding the relationship's context so that the jury can assess how a reasonable person *in that circumstance* would have perceived the danger. *Id.*

Social scientists have studied the issue and have identified several factors that are especially predictive of escalating intimate partner violence. For example, in Spencer, C. M., & Stih, S. M.'s *Risk Factors for Male Perpetration and Female Victimization of Intimate Partner Homicide*, Trauma, Violence, and Abuse, 21(3), 527-40 (2018), researchers catalogued several risk factors for intimate partner violence. Among the most predictive factors were nonfatal strangulation, direct access to guns[3], stalking, prior threats with a weapon, substance abuse, and violence toward others. Other studies corroborate the factors identified in the Spencer & Stih study and include several other predictive factors, such as the abusive partner restricting the intimate-partner-violence victim's movements and communications, prior violence, and threats to force the victim to drop charges of abuse, among others. *See* Weisz, A. N., Tolman, R. M., & Saunders, D. G. *Assessing the risk of severe domestic violence: The importance of survivors' predictions*. Journal of

[3] This study found that the risk factor that most increased the chances of an abusive partner killing his intimate partner was the abuser's "direct access to guns, meaning the perpetrator had guns in their home or could readily access a gun." Spencer & Stih, *supra*, at 34-35. The abuser's direct access to guns increased the likelihood of the abuser killing their intimate partner by 11 times over other types of intimate partner violence. *Id.* at 35. If the abuser had previously threatened their partner with a weapon, the likelihood of the abuser killing an intimate partner increased by 7 times. *Id.*

Interpersonal Violence, 15, 75-90 at 81-87 (2000). These identified factors are just some of those which, if present, could lead a victim of intimate partner violence to perceive an imminent risk of death or severe physical injury, even if that risk is not an objectively *immediate* one.

Empirical research has also shown that an intimate-partner-violence victim's own "assessment of the dangerousness of the case was a significant predictor of continued abuse." Cattaneo, L. B., & Goodman, L. A. *Victim-reported risk factors for continued abusive behavior: Assessing the dangerousness of batterers*. Journal of Community Psychology, 31, 349-69, at 362 (2003). In another study, researchers found that victims of intimate partner abuse who predicted the risk of future abuse "were more likely to be right than wrong, and were subject to neither a pessimistic nor optimistic bias." Cattaneo, L. B., et al., *supra*, at 429. In this study, "approximately two thirds (66%) of this sample assessed their risk accurately." *Id.* at 437. "[V]ictims were equally skilled in predicting re-abuse as they were in predicting no re-abuse." *Id.*

Yet another study, involving 177 women, showed that "survivors' predictions *in themselves* were strongly associated with subsequent severe violence." Weisz, A. N., et. al, *supra*, at 86-87. (2000) (emphasis added). These results demonstrated that, while other factors may be used to assess the risk of future violence, survivors' predictions were useful and successful in

predicting future violence above and beyond those factors. *Id.* "The results suggest that when survivors predict danger, it must be taken seriously even when other markers fail to identify a risk." *Id.* at 87

The findings of these studies are consistent with those of several other studies: over an extended period of months, victims' assessments and predictions of risk after an abusive incident were at least as accurate – and in many instances more accurate than – objective risk assessment instruments. Cattaneo, et al., *supra*, at 430; Cattaneo & Goodman, *supra*, at 365; Weisz, et al., *supra*, at 86-87; Heckert, D. A., & Gondolf, E. W. *Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault*. Journal of Interpersonal Violence, 19(7), 778-800 at 796 (2004).

Indeed, studies that have assessed intimate-partner-violence victims' reliability in predicting future abuse "have found that victims were at least, if not more, accurate in predicting their risk of being physically reassaulted than were practitioners, risk factors identified by prior research, and all but one of the standardized risk assessments investigated." Bell, M. E., Cattaneo, L. B., Goodman, L. A., & Dutton, M. A. *Assessing the risk of future psychological abuse: Predicting the accuracy of battered women's predictions.* Journal of Family Violence, 23, 69-80 at 69 (2008). *See also* Weisz, et. al., *supra*, at 86 (stating that including victims' predictions with other risk factors significantly improves the assessment of future risk); Heckert & Gondolf, *supra*, at 796

(same). This remains true "whether or not [the victim is] in a time of crisis when they are asked to make the assessment." Cattaneo & Goodman, *supra*, at 365.

The empirical research documenting the reliability of victims' own predictions of imminent harm is overwhelming. And it strongly supports the conclusion that the assessment of the reasonableness of a decision by a victim of intimate partner violence to use force or violence, including deadly force, against her abusive partner must take account of—and give credence to—the victim's own assessment of imminent danger. The overarching context of the relationship of abuse and its history inform the victim's assessment of the risk of imminent harm and her belief—shown to be empirically reasonable—that the use of deadly force was necessary.

The importance of this critical contextual information in assessing self-defense-related claims cannot be overstated. Juries must be provided with such information if they are to properly assess whether the use of deadly force by a defendant who has been the victim of intimate partner violence against her abusive partner was reasonable and justified. But, because intimate partner violence and the defensive responses that flow from it are so context-specific, there is no exhaustive set of relevant factors that can encompass all situations.

Indeed, the factors identified in the empirical studies discussed above rely largely on available risk assessment measures and the self-reports of victims of intimate partner violence, and therefore cannot possibly account for all the factors that may inform a victim's on-the-spot assessment of the level of risk a given situation presents. Instead, what the literature makes clear is that there are many context-specific factors and circumstances relating to a victim's lived experience of her relationship with her abuser that are relevant to a fact-finder's evaluation of the reasonableness of that victim's perception that a particular threat in a particular set of circumstances was "imminent."

For this reason, these Amici respectfully recommend that the Court endorse a holistic approach to the definition of what constitutes an "imminent" threat in the context of the justifiable-taking-of-life defense. Such definition should be one that takes account of the entire context that that may, in any each unique situation, inform the perception of imminent harm without creating a list of required factors.

II. The Court will be in good company if it endorses a context-dependent approach to determining whether a defendant had an actual and honest belief that she or he was facing a risk of imminent harm.

Amici advocate for a context-specific approach that would allow jurors to take the holistic context of a victim of intimate partner violence's experience into account as they assess whether that person actually and honestly

perceived an imminent threat of death or great bodily harm for purposes of invoking the justifiable-taking-of-life defense—including context that extends beyond the immediate circumstances of the incident. Fortunately, the Court will not be writing on a blank slate as it considers whether to adopt such an approach. Courts in California, Washington, and Kansas have long recognized the need for a case-by-case, context-dependent evaluation of all of the facts and circumstances known to the defendant, including facts and circumstances known long before the killing—particularly in situations where the defendant is a victim of intimate partner violence.

In *People v. Torres*, 210 P.2d 324 (Cal App. 1st Dist. 1949), the court reversed a conviction of murder in the second degree even though it was undisputed that the defendant stabbed the victim during an altercation after having been threatened by the decedent two weeks earlier. The defendant argued his action was justified, and on appeal, argued that he was improperly deprived of an instruction on the influence of the prior threats by the decedent. *Torres*, 210 P.2d at 326. The *Torres* court agreed with the defendant. It explained that even though the given "instruction did not necessarily exclude the previous threats from the consideration of the jury," there could be "no certainty that the jury would understand that the expression "immediate circumstances" empowered them to consider the threats made two weeks before the killing. *Id.* at 328. The *Torres* court focused on considerations like

the defendant's knowledge that the decedent carried a deadly weapon and the decedent's reputation for aggressive or violent acts, which was knowledge the defendant possessed well in advance of the incident giving rise to his conviction, as circumstances that the jury could consider. *Id.* at 325, 328. On this basis, the court vacated the conviction and remanded the case for a new trial. *Id.* at 328. *Torres* was issued in 1949. While *Torres* did not itself involve an intimate partner relationship, it is testament that for nearly 75 years (if not longer), at least some courts have recognized the need to carefully consider the broad context that informs a defendant's perception of whether he or she faces an imminent threat of death or grievous bodily injury. The type of instruction that the *Torres* court held should have been given was also later endorsed in a case involving intimate partner violence. *People v. Moore*, 275 P.2d 485 (Cal. 1954).

The Washington Supreme Court followed a similar framework in *State v. Wanrow*, 559 P.2d 548 (Wash. 1977). The fact pattern is somewhat complicated, but in short, the defendant shot and killed the decedent in the defendant's friend's home, believing that the decedent had broken in to the friend's home during the night or early morning hours and refused to leave, and with knowledge that the decedent (a large, apparently intoxicated man) had previously been accused of molesting the friend's children and was suspected of a prior attempted break-in. *Wanrow*, 559 P.2d at 550-51. The

Wanrow court reversed the defendant's convictions for second-degree murder and first-degree assault with a deadly weapon on the grounds that the trial court improperly failed to instruct the jury to consider the defendant's claim of self-defense in light of all the facts and circumstances known to the defendant, including those known substantially before the killing. *Id.* at 555-56. The trial court had, instead, instructed the jury to consider only facts or circumstances occurring "at or immediately before the killing." *Id.* at 555 & n.7.

Based on a thorough review of prior cases, the *Wanrow* court concluded that this was not, and had never been, the law in Washington. Rather, dating back to 1902, the Washington Supreme Court had consistently recognized that "the justification of self-defense is to be evaluated in light of all the facts and circumstances known to the defendant including those known substantially before the killing." *Id.* at 555. Examples of relevant circumstances for consideration included knowledge that the decedent had a reputation and habit of carrying dangerous weapons when engaged in quarrels, the reputation of the place of the killing for its lawlessness, and knowledge of the decedent's reputation for aggressive acts. Because the trial court's instruction did not clearly allow the jury to consider such circumstances, the *Wanrow* court concluded that the given instruction:

> [E]rred in limiting the [f]acts and circumstances which the jury could consider in evaluating the nature of the threat of harm as perceived by respondent. Under the well-established rule, this

> error is presumed to have been prejudicial. Moreover, far from affirmatively showing that the error was harmless, the record demonstrates the limitation to circumstances "at or immediately before the killing" was of crucial importance in the present case. Respondent's knowledge of the victim's reputation for aggressive acts was gained many hours before the killing and was based upon events which occurred over a period of years. Under the law of this state, the jury should have been allowed to consider this information in making the critical determination of the "degree of force which . . . a reasonable person in the same situation . . . seeing what (s)he sees and knowing what (s)he knows, then would believe to be necessary."

Id. at 557 (citations omitted). Again, while *Wanrow* did not involve an intimate partner relationship, the court's holding underscores yet again that it has been a longstanding principle of self-defense law that consideration of the full context in assessing the reasonableness of a defensive action is crucial and necessary.

In *State v. Allery*, 682 P.2d 312 (Wash. 1984), the Washington Supreme Court again reversed a defendant's second-degree murder conviction on the basis that the trial court's instruction on self-defense was reversible error because it had prevented the jury from considering all the facts and circumstances known to the defendant prior to and at the time the defendant shot her husband. While the trial court in *Allery* did provide a jury instruction on self-defense, the defendant claimed—and the state supreme court agreed—that the instruction "did not adequately convey the subjective standard law of self-defense" because the jury "was not instructed to evaluate self-defense in

the light of all circumstances known to the defendant, including those known before the homicide." *Id.* at 314.

As the *Allery* Court explained, the "justification of self-defense must be evaluated from the defendant's point of view as conditions appeared to her at the time of the act." *Id.* (*citing State v. McCullum,* 656 P.2d 1064 (1983)). It thus follows that "[t]he jurors must understand that, in considering the issue of self-defense, they must place themselves in the shoes of the defendant and judge the legitimacy of her act *in light of all she knew at the time." Allery*, 682 P.2d at 314 (emphasis added).

In particular, the *Allery* court noted that the evidence supporting a finding that the defendant was a victim of intimate partner violence, which the jury could consider as an explanation as to why she did not leave her partner, why she did not inform police or friends, and why she might fear increased aggression. *Id.* Expert testimony on the dynamics of intimate partner violence was admissible "[t]o effectively present the situation *as perceived by the defendant*, and the reasonableness of her fear" of the decedent. *Id.* at 316 (emphasis added). The court thus summarized that the jury "should have been instructed to consider the self-defense issue from the defendant's perspective in light of all that she knew and had experienced with the victim." *Id.* at 315. Specifically, shortly after her marriage began, the defendant "began to experience what was to become a consistent pattern of physical abuse at the

hands of her husband," including "periodic pistol whippings, assaults with knives, and numerous beatings" that increased in frequency and severity and resulted in her becoming hospitalized on at least one occasion. *Id*. at 313.

On the date of the incident for which she was charged, the defendant in *Allery* had come home and found her husband at her home despite a restraining order excluding him from that residence. *Id*. The husband said, "I guess I'm just going to have to kill you," among other things, to the defendant. *Id.* The defendant tried to escape through a bedroom window but was unsuccessful. *Id.* After failing to escape, she heard a metallic noise from the kitchen and thought that her husband was getting a knife, as he had done in the past, so the defendant loaded one shell into a shotgun and moved into the kitchen, where she shot one time and killed her husband while he was lying on the couch. *Id.* at 313-14. Without being instructed to consider all of the circumstances available to the defendant, the jury likely would have concluded that there was no "immediate" risk of death or great bodily harm to the defendant, since the husband was laying on the couch. However, had the jury been instructed to consider the context of all the defendant knew, after enduring the years of escalating violent abuse that often involved weapons, it is possible that a jury could find that it was reasonable for the defendant to believe such harm was imminent, even if it was not immediately likely to occur.

This is yet another example where "imminent" and "immediate" differ materially for survivors of intimate partner abuse.

Finally, as the Minnesota Court of Appeals and the State already recognize, a particularly authoritative opinion on the distinction between "immediate" and "imminent" harm comes from the Kansas Supreme Court's opinion in *State v. Hundley*, 693 P.2d 475 (Kan. 1985). In *Hundley*, a woman moved into a motel to escape her abusive husband after ten brutally terrifying years of marriage. 693 P.2d at 476. During that time, the husband had "knocked out several of her teeth, broken her nose at least five times, and threatened to cut her eyeballs out and her head off." *Id.* He had also "kicked [the defendant] down the stairs on numerous occasions and had repeatedly broken her ribs." *Id.* One night, the defendant's husband broke into her motel room, choked her, and threatened to kill her. During a break in the actual beating, her husband pounded a beer bottle on the nightstand and threw a dollar bill toward the window, demanding that she go buy cigarettes. *Id.* The wife felt threatened by the beer bottle because her husband had used beer bottles to hit her many times before. *Id.* She pulled a gun from her purse and shot him. *Id.*

The State charged the wife with murder, but she invoked self-defense. The jury convicted her of involuntary manslaughter. *Id.* at 477. On appeal, she argued the district court had incorrectly instructed the jury on self-defense.

Id. By statute, a person is justified in the use of force when she reasonably believes it is necessary to defend herself against the *imminent* use of unlawful force. *Id.* The district court, however, instructed the jury that a person is justified in the use of force when she reasonably believes it is necessary to defend herself against the *immediate* use of unlawful force. *Id.*

The Kansas Supreme Court found the jury instruction caused reversible error. *Id.* at 479–80. In reaching this conclusion, the court distinguished between the meaning of the words "imminent" and "immediate," and explained that while "immediate" means "'[o]ccurring, acting or accomplished without loss of time,'" "imminent" means "'[r]eady to take place . . . or impending.' Therefore, the time limitations in the use of the word 'immediate' are much stricter than those with the use of the word 'imminent.'" *Id.* at 479 (quoting Webster's Third New International Dictionary 1129–30 [1961]). Because the jury could have found the defendant was facing an imminent but not immediate threat, the instruction was erroneous. *Id.* at 480. Specifically, a properly instructed jury could have – and likely would have – taken into account the ten brutalizing years of history and context that the defendant had suffered at the hands of her husband and concluded that her belief that a threat of death or great bodily harm was imminent, even if it did not seem that facing a man with a broken beer bottle presented an "immediate" threat, in isolation. *Hundley* presents a prime example of how context and relationship

history play a crucial role in assessing whether a belief of imminent harm is reasonable, and how conflating "imminence" with "immediacy" deprives survivors of intimate partner violence a fair evaluation of their circumstances and options.

The *Hundley* court also cited *Wanrow* for several circumstances that the jury could properly consider when evaluating the defendant's assessment of an imminent threat, including the defendant's level of emotional and financial dependency upon the decedent, the defendant's capability to seek help (and his or her reasons to fear reprisal for doing so), the length and severity of the mental and physical abused inflicted on the defendant by the decedent, the relative size and strength of the decedent, threats of future abuse, the presence and potential threat to children or pets, and the use of alcohol or controlled substances by the decedent. *Id.* Like *Wanrow*, the *Hundley* court recognized that all of these circumstances should properly be considered by the jury when evaluating the reasonableness of the defendant's response. *Id.*

As discussed, courts have long grappled with how to properly instruct juries in cases involving claims of self-defense, and along the way, they have recognized that the holistic context between a criminal defendant and the person they use force against may inform the defendant's actual and honest belief that she or he faced an imminent risk of death or serious physical injury. The cases cited in this section illustrate the practical difference in instructing

a jury that the correct legal standard is whether it was reasonable for a defendant to believe that the risk of harm is "imminent" as opposed to "immediate" cannot be understated. Conflating these two words with materially different meanings deprives a defendant who has survived longstanding intimate partner violence a full and fair analysis of the reasonableness of their belief and perception based on the context of the relationship.

Like in the cases above, had Ms. Clark's jury not been incorrectly instructed that "imminent" means "immediate," the jury likely would have considered Ms. Clark's entire experience throughout her relationship, especially the physical and psychological abuse she was subjected to, in determining whether her belief that significant harm was imminent, even if it did not seem that such harm would occur immediately. Instead, the trial court's response to the jury's question invited the jury to ignore that context and narrow the scope of Ms. Clark's circumstances under consideration in rendering a verdict. This instruction, like the instructions in *Allery* and *Hundley*, denied Ms. Clark her right to have a jury fully and fairly determine the reasonableness of her actions in light of the entire context of the relationship. Accordingly, the empirical social science research and persuasive case law from other jurisdictions both support affirming the Minnesota Court

of Appeals' conclusion that it was reversible error for the district court to instruct the jury that an "imminent" threat is one that is "immediate."

III. Minnesota self-defense case law also supports an approach that permits a jury to assess whether the defendant's perception that she is at risk of imminent bodily harm is reasonable based on the entire context of the relationship.

As this Court knows, Minnesota law, like the law of other states, already recognizes the importance of context in self-defense and justifiable-taking-of-life claims. Minnesota law provides that the assessment of self-defense claims, at least in part, requires an assessment of the defendant's subjective state of mind. Minnesota Statute section 609.065 (2020) authorizes a person to use deadly force "when necessary in resisting or preventing an offense which *the actor* reasonably believes exposes the actor or another to great bodily harm or death." (emphasis added). In *State v. Johnson*, this Court included "*the defendant's actual and honest belief* that he or she was in imminent danger of death or great bodily harm" as one of the elements of justifiable-taking-of-life. 719 N.W.2d 619, 629 (Minn. 2006) (emphasis added). Similarly, in *State v. Bjork*, this Court explained that "the elements of self-defense are by nature *very specific to the person apprehending fear* and the particular circumstances causing fear." 61 N.W.2d 632, 636-37 (Minn. 2000) (emphasis added).

After learning of the defendant's circumstances and subjective belief, a jury must then determine whether the defendant's belief that there was an

imminent risk of death or great bodily harm, was reasonable. *Johnson*, 719 N.W.2d at 629. In doing so, the jury must consider that individual's specific context and circumstances. *Id.* This Court also previously concluded that an understanding of the context of a relationship marked by intimate partner violence is crucial to the jury's determination of the victim's reasonableness in using force against her abuser, as such context bears directly on the reasonableness of her "fear that she was in imminent peril of death or serious bodily injury." *State v. Hennum*, 441 N.W.2d 793, 798 (Minn. 1989), *abrogated on other grounds by State v. Glowacki*, 630 N.W.2d 393 (Minn. 2001).

As highlighted by this case, these legal standards present significant challenges to jurors when the defendant is a person who has used deadly force against an intimate partner who previously abused her. Much like the jury in this case, juries around the state and country grapple with the same question: how can we determine when it is reasonable for the victim of intimate partner abuse to believe that danger of death or serious bodily injury is "imminent"? And this is precisely where context matters. This is why the entire context of an intimate partner relationship marked by violence—often escalating over months and years—is so crucial.

As outlined above, the empirical research related to intimate partner violence has consistently demonstrated that an abuse victim's perception of such violence is a significant, reliable, and accurate predictor of ongoing or

future risk of harm. This is true above and beyond the use of objective risk assessment instruments. When used in conjunction with those instruments, the research has demonstrated that the intimate-partner-violence victim's perceptions and predictions increase the accuracy of those instruments substantially. What this demonstrates is that a person who has experienced intimate partner violence is able to consider their individual circumstances, in light of the full context of their relationship, and make highly accurate predictions regarding future risk, including when a risk of significant harm is imminent but not necessarily immediate. The jury should likewise be instructed to consider that context in assessing that person's actions.

Because of the deeply contextual nature of intimate partner relationships, Minnesota courts should be loath to equate "imminence" with "immediacy," especially in cases arising from alleged defensive actions against an abusive partner. To do so would divorce the circumstances that led to the charges "from the larger context of the parties' relationship," robbing the jury of the ability to properly assess the defendant's actions in light of the self-defense or justifiable-taking-of-life standards. Larance, L. Y., et al., at 471. (2022) (citation omitted). It would likewise "obliterate[ ] the nature of the buildup of terror and fear which had been systematically created over a long period of time." *Hundley*, 693 P.2d at 479. Instructing a jury that a risk of "imminent" death or great bodily harm means such harm that will occur

"immediately" is not only legally incorrect in light of this Court's prior precedent; such instruction ignores the deeply relevant context of intimate partner violence and flies in the face of significant empirical social science research that explains how reliable and accurate individual perceptions of imminent harm in this context tend to be.

Amici are not suggesting that, because the research demonstrates the significant accuracy that victims of intimate partner violence have in predicting future harm, the Court should adopt a rule of blind deference to an abuse victim's perception of harm at the time of their decision to use force. But what this Court can, and should, do is recognize that context matters, particularly in circumstances of intimate partner violence. It is likely that future juries will have similar inquires to that which the jury had in Ms. Clark's case, inquiring what it means for a threat or risk of harm to be "imminent." The Court should take this opportunity to mitigate the risk and cost of another erroneous instruction.

Amici ask this Court to hold that it is erroneous to equate "imminence" with "immediacy" and that, especially in situations involving intimate partner violence, the lived experience of the victims of such violence critically informs the reasonableness of their perception of imminent harm. Amici also ask the Court to endorse an approach that guides the jury to consider the defendant's own perception – her actual and honest belief – of imminent harm, and to

evaluate the totality of the circumstances and the history of her relationship to the decedent to assess whether that perception was a reasonable one.[4] As noted above, such an approach is not only consistent with existing Minnesota case law but is also consistent with much empirical research of the effects of intimate partner violence on victims' perceptions of imminent harm.

The proposed approach would also provide a framework that may be applied in evaluations of self-defense claims under many other fact patterns, beyond those involving intimate partner violence. While such a holding would likely recognize that a consideration of the context of the relationship between the defendant and decedent is particularly important in cases involving intimate partner violence, the proposed framework would be capacious enough to recognize the importance of the relationship in other contexts too.

CONCLUSION

For the reasons presented, the Amici Scholars respectfully request that the Court affirm the Court of Appeals' reversal of Ms. Clark's conviction, hold that it was erroneous to equate "imminent" with "immediate," and endorse the proposed holistic approach to the evaluation of the reasonableness of a defendant's perceptions of imminent harm, so as to ensure a fair and just

[4] A defendant already bears the burden of producing evidence to support a self-defense claim. *Johnson*, 719 NW.2d at 629. Amici's proposed approach would not enlarge that burden.

consideration of claims of self-defense and the justifiable taking of life, especially in cases involving intimate partner violence.

Respectfully submitted,

ROBINS KAPLAN LLP

Dated: December 8, 2023

/s/ Raoul Shah

Christopher K. Larus (#226828)
Eric P. Barstad (#0398979)
Marcus A. Guith (#0399520)
Raoul Shah (#0399117)
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402
Telephone: (612) 349-8500
Fax: (612) 339-4181

CLarus@RobinsKaplan.com
EBarstad@RobinsKaplan.com
MGuith@RobinsKaplan.com
RShah@RobinsKaplan.com

Counsel for Amici Curiae Angela Hattery, Earl Smith, Leigh Goodmark, Claire Renzetti, Susan Miller, Ruth Fleury-Steiner, and Lisa Larance

Certification of Document Length

I hereby certify that this amicus brief conforms to the requirements of Minn. R. Civ. App. P. 132, regarding length and format of amicus briefs. This brief is produced with a monospaced font, and the length of this brief is 6,423 words, exclusive of the portions exempted from the rule. This brief was prepared using Microsoft Word 365 software.

Dated: December 8, 2023

/s/ Raoul Shah
Raoul Shah

APPENDIX A

The Amici are:

- Dr. Angela Hattery, Ph.D.—Professor of Women & Gender Studies and Co-Director of the Center for the Study and Prevention of Gender-Based Violence at the University of Delaware. She is the author of eleven books, and dozens of book chapters and peer-reviewed articles, all focused primarily on intimate partner violence.

- Dr. Earl Smith, Ph.D.— Emeritus Distinguished Professor of American Ethnic Studies and Sociology at Wake Forest University. He is a Fellow at the Center for the Study and Prevention of Gender-Based Violence at the University of Delaware and is the author of twelve books in related areas, including his most recent book, *Gender, Power, and Violence* (2019).

- Professor Leigh Goodmark, J.D.—Marjorie Cook Professor of Law at the University of Maryland Francis King Carey School of Law. She co-directs the Clinical Law Program and directs the Gender, Prison, and Trauma Clinic, which she also founded. Professor Goodmark is an internationally-recognized authority on gender-based violence. She has authored several books and law review articles on related issues including *Imperfect Victims: Criminalized Survivors and the Promise of Abolition Feminism* (2023), *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (2018), and *A Troubled Marriage: Domestic Violence and the Legal System* (2011).

- Dr. Claire Renzetti, Ph.D.—Judi Conway Patton Endowed Chair in the Center for Research on Violence Against Women and Professor and former Chair in the Department of Sociology at the University of Kentucky. Her research has focuses on the violent victimization experiences of socially and economically marginalized groups of women, including women living in poverty and women in same-sex intimate partnerships.

- Dr. Susan L. Miller, Ph.D.—Professor in the Department of Sociology and Criminal Justice at the University of Delaware. Her research interests include gender-based violence, justice-involved women, victims' rights, gender and criminal justice policy. She has published numerous books and articles about the intersection of victimization and offending

among survivors of intimate partner violence, including books titled *Victims as offenders: The paradox of women's use of violence in relationships* and *After the crime: The power of restorative justice dialogues between victims and violent offenders.*

- Dr. Ruth Fleury-Steiner, Ph.D.—Associate Professor of Human Development and Family Science at the University of Delaware. Her research focuses on gender-based violence, with an emphasis on understanding interactions between victims and service systems in order to improve systemic responses, and particularly the civil and criminal legal systems' responses to intimate partner violence.

- Dr. Lisa Young Larance, Ph.D.–Assistant Professor at the Bryn Mawr College Graduate School of Social Work and Social Research. Dr. Young Larance's practice and focus on the experience of women who have survived domestic and sexual violence and responded to that harm with resistive force. She has a wealth of direct practice experience, including individual trauma-informed therapy and group co-facilitation, in clinical, community, and prison-based settings. Her work illuminates how systems and institutions affect women with complex relationship histories. Dr. Young Larance has multiple peer-reviewed publications. Her forthcoming book (August 2024) is titled *Broken: Women's Stories of Intimate and Institutional Harm and Repair*.

Case No. A22-0611

State of Minnesota
In Supreme Court

State of Minnesota,
Petitioner,
v.
Stephanie Louise Clark,
Respondent.

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

On December 8, 2023, Laura Carrero, a Legal Administrative Assistant at Robins Kaplan LLP, mailed a copy of the *Amici Curiae* Brief of Seven Gender Violence Scholars in Support of Respondent, by placing a true and correct copy thereof in a sealed envelope, postage prepaid, addressed to the following counsel, which are conventional service recipients:

ATTN: Criminal Division
Hennepin County District Court
C-1153 Government Center
300 S Sixth Street
Minneapolis, MN 55487

Peter J. Schwingler
Leonard Street and Deinard
150 S Fifth Street, Suite 2300
Minneapolis, MN 55402

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: December 8, 2023

/s/ Laura Carrero
Laura Carrero
Hennepin County, MN