

**STATE OF MINNESOTA
IN SUPREME COURT
A22-0611**

State of Minnesota,
Appellant,

vs.

Stephanie Louise Clark,
Respondent.

BRIEF OF AMICUS CURIAE TUBMAN

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STATEMENT OF INTEREST OF AMICUS CURIAE

Tubman is a 501(c)(3) nonprofit organization, resulting from the merger of the Harriet Tubman Center; Family Violence Network; Chrysalis, A Center for Women; and ElderCare Rights Alliance.

Tubman is the largest domestic violence organization in Minnesota and has been a trusted resource for more than 45 years providing a wide range of services, including safety planning, emergency shelter, housing, therapy and counseling, legal services and help, and programs for youth. These services are provided to people of all ages, all genders, and all cultural backgrounds. Tubman assists people who are experiencing relationship violence, substance abuse, mental health issues and many other forms of trauma. Tubman’s mission is to advance opportunities for change so that all people can experience safety, hope, and healing. Tubman’s interest in this action is public in nature.

ARGUMENT

Tubman urges this court to affirm the decision of the Minnesota Court of Appeals. Tubman agrees that the district court materially misstated the law when it defined the word “imminent” in the self-defense jury instruction as “immediate.” *See generally State v. Clark*, No. A22-0611, 2023 WL 2637490, *4 (Minn. App. March 27, 2023). Specifically, Tubman believes that reading “imminent” as “immediate” fails to permit the factfinder to take into account the effect of coercive control in the context of domestic-partner abuse.

Coercive control is a recognized pattern of behavior used by abusers to manipulate and dominate others through both physical and psychological means. Although Minnesota courts have not previously addressed coercive control in the context of a claim of self-

defense, they have recognized the principle (both by name and in substance) and have addressed its effect in both civil and criminal cases, and courts in other jurisdictions have done likewise. Recognition of the potential impact of coercive control on the “imminent danger” requirement of self defense in the criminal law is a logical and necessary extension of Minnesota’s existing treatment of the doctrine.

Indeed, the failure to recognize coercive control as a potential factor in determining whether a victim is in “imminent danger” would threaten serious harm to abuse victims’ rights and welfare. This danger would arise both in the criminal context, as in this case, and in the civil-protection context, where critical domestic protection statutes echo the “imminent danger” language of the self-defense instruction at issue here.

I. THE NATURE OF COERCIVE CONTROL.

Domestic violence is a pervasive societal issue that extends beyond physical harm in isolation and encompasses subtler yet equally damaging forms of abuse. In this context, “coercive control” has emerged as a critical concept in fully understanding the intricacies of intimate partner violence. Experts define coercive control “as an ongoing pattern of domination by which male abusive partners primarily interweave repeated physical and sexual violence with intimidation, sexual degradation, isolation and control.”¹ The result of coercive control is a “condition of *entrapment* that can be hostage-like in the harms it

¹ Evan Stark, *Re-presenting Battered Women: Coercive Control and the Defense of Liberty* (Paper prepared for Violence Against Women: Complex Realities and New Issues in a Changing World Conference, Montreal, 2012) (“2012 Stark”) at 7, available at https://www.stopvaw.org/uploads/evan_stark_article_final_100812.pdf.

inflicts on dignity, liberty, autonomy and personhood as well as to physical and psychological integrity.”²

Although the pattern of conduct that constitutes coercive control may include physical violence, it has other aspects as well.³ Coercive control involves at least two subcategories of tactics, coercion and control, that are intended to entrap victims.⁴ “Coercion” tactics, which “entail[] the use of force or threats to compel or dispel a particular response,” may cause “immediate pain, injury, fear, or death,” as well as “long-term physical, behavioral, or psychological consequences.”⁵ Coercion tactics include violence, intimidation, surveillance, degradation, and shaming.⁶

In addition, “control” tactics are used to “compel obedience *indirectly* by depriving victims of vital resources and support systems, exploiting them, dictating preferred choices and micro-managing their behavior by establishing ‘rules’ for everyday living.”⁷ The purpose of control tactics is to make victims “feel their abuse is all-encompassing” and that the victim’s partner “is omnipresent.”⁸ Control tactics include isolation, deprivation, exploitation, and regulation.⁹ The effects of such tactics can be dramatic: “[t]hrough systematic restrictions on freedom and independence, individuals experiencing coercive control are often isolated from friends, family, or other support systems; entrapped within

² *Id.*; *see also id.* at 5.

³ *Id.* at 3.

⁴ *Id.* at 8.

⁵ *Id.*

⁶ *Id.* at 8-11.

⁷ *Id.* at 11 (emphasis added).

⁸ *Id.*

⁹ *Id.* at 11-13.

the relationship due to financial, logistical, social, or emotional barriers to escaping; and fearful for not only their own safety but that of family members and other people in their network.”¹⁰

Naming and recognizing the concept of coercive control in the context of domestic violence is crucial to fully comprehending the nuanced dynamics of abusive relationships.¹¹ Studies show a strong link between coercive control and an increased risk of fatality. For example, a woman is 5.1 times more likely to be murdered when a partner controls most or all of the woman’s daily activities,¹² and 9.2 times more likely to be murdered when a partner is violently and constantly jealous.¹³ There is also a strong association between coercive control and the *frequency* of victimization.¹⁴ Coercive control is “associated with elevated rates of psychological, physical, and sexual violence

¹⁰ Kelly JB, Johnson MP, *Differentiation among types of intimate partner violence: Research update and implications for interventions*, Family Court Review, 46:476–499. <https://doi.org/10.1111/j.1744-1617.2008.00215.x>

¹¹2012 Stark at 4.

¹² Jacquelyn C. Campbell, Daniel Webster, Jane Koziol-McLain, Carolyn Rebecca Block, Doris Campbell, Mary Ann Curry, Faye Gary, Judith McFarlane, Carolyn Sachs, Phyllis Sharps, Yvonne Ulrich & Susan A. Wilt, *Assessing Risk Factors for Intimate Partner Homicide*, 250 Nat’l Inst. Just. J. 14, 17 (2003), available at <https://www.ojp.gov/pdffiles1/jr000250e.pdf>; see also Amanda Gearing, *What is coercive control? These are the concerning behaviors*, The Guardian, May 13, 2022, available at <https://www.theguardian.com/society/2022/may/14/what-is-coercive-control-these-are-the-concerning-behaviours>.

¹³ *Id.*

¹⁴ Dichter ME, Thomas KA, Crits-Christoph P, Ogden SN, Rhodes KV. *Coercive Control in Intimate Partner Violence: Relationship with Women’s Experience of Violence, Use of Violence, and Danger*. (“2018 Dichter”) Psychol Violence. 2018 Sep;8(5):596-604. doi: 10.1037/vio0000158. Epub 2018 Jan 11. PMID: 30555730; PMCID: PMC6291212.

victimization.”¹⁵ The level of control in domestic relationships can be a “predictor” of “future sexual assault and of severe and fatal violence.”¹⁶

Understanding the role of coercive control in the context of domestic abuse is also important to understanding the role of violence. Studies show that “[u]se of violence among women experiencing coercive control may, in fact, reflect higher levels of fear, risk, and isolation leading to use of violence as a safety and survival strategy.”¹⁷

Several additional aspects of coercive control also deserve mention here. First, the exercise of coercive control often occurs over an extended period of time. Over time, a person subjected to coercive control loses the ability to stop the controlling party from dictating their life and often find themselves unable to distance themselves from the controlling party. In addition, although coercive control does not always involve physical violence, where coercive control is mixed with other physical forms of domestic abuse, an individual is often left without recourse to preserve their individual autonomy and integrity. Coercive control thus may not be an immediate action by the perpetrator, but an ongoing pattern of behavior that prevents the victim from seeking relief or assistance.

II. THE LEGAL TREATMENT OF COERCIVE CONTROL.

Minnesota courts have long recognized the concept of coercive control, both by description and by name, and other jurisdictions have done so as well. Examination of this existing treatment of coercive control provides a solid platform for the application of the concept in the context of self-defense.

¹⁵ *Id.*

¹⁶ 2012 Stark at 4.

¹⁷ 2018 Dichter

A. Minnesota’s Treatment of Coercive Control.

The Minnesota decisions most on point here do not use the term “coercive control,” but they nevertheless make clear that a court should review the history of abuse in a relationship when considering the existence of an imminent threat of harm. For example, in *Boniek v. Boniek*, 443 N.W.2d 196 (Minn. App. 1989), the court addressed a petition under the Domestic Abuse Act, which defines “domestic abuse” in part as “the infliction of fear of *imminent* physical harm, bodily injury, or assault[.]” Minn. Stat. 518B.01 Subd. 2(a)(2) (emphasis added). The *Boniek* court affirmed an order for protection for such a fear of imminent physical harm based on past acts of the abuser. These acts included conduct that was not *physically* directed at the victim: delivering a copy of a marriage certificate cut in half to the victim; a physical altercation with an insurance salesperson at the victim’s home; and repeated driving around the victim’s residence. *Id.* at 197. The Court of Appeals held that “in light of [respondent]’s *history of abusive behavior*, sufficient evidence exists to infer a present intent to inflict fear of imminent physical harm, bodily injury or assault within the meaning of the Domestic Abuse Act.” *Id.* at 198 (emphasis added). In other words, the prior actions of the respondent—even though they did not “immediately” threaten the petitioner with physical harm—provided a proper basis for finding a present fear of “imminent” harm. Although the *Boniek* court did not use the term “coercive control,” the decision nevertheless recognized that imminent harm need not be immediate in the domestic abuse context.

Similarly, in *Pechovnik v. Pechovnik*, the Court of Appeals noted that the district court based an order for protection on its findings that:

“Within the last 90 days, the [appellant], by words and actions, has placed [respondent] in fear of immediate bodily harm by gestures, persistent questioning, aggressive conversation and controlling behavior [that] when coupled [with] an old history of threatening behavior constitutes domestic abuse.” The district court also found that “[respondent] is in fear of bodily harm—imminent bodily harm;” “[respondent] and her sister have convinced [the district court] that she is in fear of bodily harm”; and appellant manipulates respondent.

765 N.W.2d 94, 99 (Minn. App. 2009). The Court of Appeals observed that “[a]lthough ‘gestures, persistent questioning, aggressive conversation and controlling behavior’ *may not show present intent to inflict fear of imminent physical harm in their own right*, the district court also found that there was a ‘history of threatening behavior.’” *Id.* at 99-100 (emphasis added). Again, the court did not use the term “coercive control,” but the *concept* was sufficient for the court to find that the petitioner had an imminent fear of harm based on past actions.

Likewise, in *Butler v. Jakes*, 977 N.W.2d 867 (Minn. App. 2022), the petitioner alleged that the abuser “told her that he would *go home* to ‘grab his gun from his top drawer, and shoot his kids in the face and then shoot his father and his brother.’” *Id.* at 870 (emphasis added). The petitioner stated she was “terrified’ because the abuser did “not give empty threats.” *Id.* at 872. The Court of Appeals found this evidence sufficient to support the victim’s “fear of imminent physical harm to her children.” *Id.* at 872. As in *Boniek* and *Pechovnik*, the district court relied on the parties’ history to support a finding of a present fear of imminent harm. In sum, although they do not use the term “coercive control,” these cases make clear in the OFP context that although coercive control will not always result in a threat of *immediate* harm, the actions of the abuser nevertheless gave rise to a fear of *imminent* harm.

The two Minnesota appellate cases that *do* use the term “coercive control” arise in somewhat different contexts, but likewise recognize that coercive control is an abusive practice that allows a partner to maintain power and control in unhealthy relationships. In *Thornton v. Bosquez*, 933 N.W.2d 781 (Minn. 2019), this Court affirmed the award of sole legal custody of a child to a mother where the father was found to have exhibited “coercive control and manipulation” of the mother. *Id.* at 787. The court affirmed the family court’s reliance on the finding that, even though the mother had engaged in physical abuse of the father, the father had engaged in coercive control and manipulation via “offensive and demeaning” behavior, including threatening to take custody of the child by using sensitive information about the mother’s personal life and dumping out breastmilk. *Id.* And in the addressing criminal sexual conduct charges in *State v. Danielski*, 348 N.W.2d 352 (Minn. App. 1984), the Court of Appeals concluded that the defendants’ use of threats to exercise “coercive control” over a sexual abuse victim for seven years, preventing discovery of earlier abuse, was sufficient to convert the abuse into a “continuing offense” and thus avoid the statute of limitations that would otherwise have barred prosecution. *See id.* at 355-57. In each of these cases, the court both explicitly recognized the concept of “coercive control” and made clear that the existence of “coercive control” had significant legal consequences in the circumstances of the case.

Taken together, these cases establish Minnesota’s recognition that the existence of coercive control is a real and substantial factor in the conduct of domestic abuse victims, and this Court should permit a jury to account for coercive control in any instruction addressing a claim of self defense. *See State v. Bjork*, 610 N.W.2d 632, 636-37 (Minn.

2000) (“[T]he elements of self-defense are by nature very specific to the person apprehending fear and the very particular circumstances causing fear.”) (citing *State v. Nystrom*, 596 9 N.W.2d 256, 260 (Minn. 1999)).

B. The Treatment of Coercive Control in Other Jurisdictions.

The concept of coercive control is neither new to the law nor unique to Minnesota. Courts in other jurisdictions have long recognized both coercive control and its legal consequences, *see, e.g., State v. Hundley*, 693 P.2d 475, 476 (Kan. 1985) (describing condition that is now referred to as “coercive control”), and legislatures have incorporated the concept in domestic protection law.

The theory of coercive control is well established. As one federal district court described it, coercive control is “a psychological dynamic often seen in abusive relationships that leads an abuse victim to behave in counterintuitive ways, such as by declining to take opportunities to leave an abusive situation or by expressing gratitude to an abuser.” *United States v. Torres*, No. 20CR608 (DLC), 2021 WL 1947503, at *7 (S.D.N.Y. May 13, 2021), *aff’d*, No. 21-2665-CR, 2023 WL 378942 (2d Cir. Jan. 25, 2023). “The process by which a [partner] exerts coercive control is based upon ‘a systematic, repetitive infliction of psychological trauma’ designed to ‘instill terror and helplessness.’” *Feltmeier v. Feltmeier*, 333 Ill. App. 3d 1167, 1181, 777 N.E.2d 1032, 1043 (2002), *aff’d*, 207 Ill. 2d 263, 798 N.E.2d 75 (2003).

In criminal cases, coercive control has been used to explain the behavior of both victims and defendants, with courts denying a number of attempts to exclude expert testimony under the Supreme Court’s *Daubert* standard. *See, e.g., United States of America*

v. Lawrence Ray, No. 20-CR-110 (LJL), 2022 WL 101911, at *10 (S.D.N.Y. Jan. 11, 2022) (denying *Daubert* motion to exclude expert testimony on coercive control, noting numerous courts have admitted similar testimony to help a jury understand conduct). In *Torres*, for example, the government sought to introduce testimony from a domestic abuse expert on coercive control and its effect on a victim’s “decision-making and free will.” *Torres*, 2021 WL 1947503, at *2. The court denied a defense motion to exclude, finding that the testimony satisfied the requirements of Fed. R. Evid. 702 and *Daubert* and would help the jury contextualize the fact that one of the defendant’s alleged kidnapping victims did not take advantage of any of several opportunities to flee despite being left alone. *Id.* at 2.

Conversely, the Ninth Circuit vacated a criminal conviction on the ground the trial court had wrongly excluded evidence of coercive control that had been directed at the defendant. *See United States v. Haischer*, 780 F.3d 1277, 1284 (9th Cir. 2015). The defendant in *Haischer* was charged with wire fraud and had sought to introduce evidence that her co-defendant boyfriend had forced her to sign papers used in a fraudulent loan application by yelling at her and preventing her from seeking medical attention for a badly broken leg. 780 F.3d at 1280. The Ninth Circuit found that the court’s instruction to the jury to disregard any testimony of alleged abuse was improper because the jury had also been instructed that the defendant “knowingly committed fraud without actual subjective awareness if she: (1) was aware of a high probability that the information she included in mortgage loan applications was false; and (2) *deliberately* avoided learning the truth.” *Id.* at 1282 (emphasis added). Under Ninth Circuit caselaw, actions influenced by coercive

behavior potentially were not “deliberate,” and the appellate court held that the jury should have been allowed to consider evidence of the abuse in determining whether the second prong of the instruction was satisfied. *Id.* at 1282-83 (citing *Hernandez v. Ashcroft*, 345 F.3d 824, 837 (9th Cir.2003)).¹⁸

Beyond the courts, at least nine state legislatures have recognized the importance of coercive control in domestic abuse situations by including and defining the principle in their domestic abuse statutes.¹⁹ For example, Hawai‘i’s Domestic Abuse and Protection Order Statute defines coercive control as follows:

“Coercive control” includes a pattern of behavior that seeks to take away the individual's liberty or freedom and strip away the individual’s sense of self, including bodily integrity and human rights, whereby the “coercive control” is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior including:

- (1) Isolating the individual from friends and family;
- (2) Controlling how much money is accessible to the individual and how it is spent;
- (3) Monitoring the individual’s activities, communications, and movements;
- (4) Name-calling, degradation, and demeaning the individual frequently;

¹⁸ Also instructive is a case involving a petition for the return of a child under the Hague Convention. *See Grano v. Martin*, 443 F. Supp. 3d 510 (S.D.N.Y. 2020), *aff’d*, 821 F. App’x 26 (2d Cir. 2020). The court found that, despite granting a husband’s petition, “for the record and for the use of any court that takes up custody or divorce proceedings in the future, that it has found [petitioner] exerted coercive control over [his wife], which is undoubtedly a serious form of domestic abuse.” *Id.* at 545. Examples of coercive control employed against the wife cited by the court included frequent verbal and online abuse that “tried to make her feel worthless on a regular basis” and attempts to “control all aspects of her life, including her employment, her appearance, and the way she raised [the child].” 443 F. Supp. 3d at 532-33.

¹⁹ Ark. Code Ann. § 9-15-219; Conn. Gen. Stat. § 46b-1; D.C. Code §16-4015; R.R.S. Neb. § 43-2922; Okla. Stat. tit. 43, § 109; Haw. Rev. Stat. § 586-1; Cal. Fam. Code § 6220 and § 6320; 8 L.P.R.A. § 602; Wash. Stat. § 7.105.010.

- (5) Threatening to harm or kill the individual or a child or relative of the individual;
- (6) Threatening to publish information or make reports to the police or the authorities;
- (7) Damaging property or household goods; and
- (8) Forcing the individual to take part in criminal activity or child abuse.²⁰

California’s Family Code makes coercive control a subcategory of “disturbing the peace of the other party,” and gives similar examples of coercive control behavior, including:

- (1) Isolating the other party from friends, relatives, or other sources of support.
- (2) Depriving the other party of basic necessities.
- (3) Controlling, regulating, or monitoring the other party’s movements, communications, daily behavior, finances, economic resources, or access to services.
- (4) Compelling the other party by force, threat of force, or intimidation, including threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage.
- (5) Engaging in reproductive coercion, which consists of control over the reproductive autonomy of another through force, threat of force, or intimidation, and may include, but is not limited to, unreasonably pressuring the other party to become pregnant, deliberately interfering with contraception use or access to reproductive health information, or using coercive tactics to control, or attempt to control, pregnancy outcomes.”²¹

In sum, the recognition of coercive control in the domestic abuse context by the courts and legislatures of other states reinforces the appropriateness of incorporating the concept in this case, in the context of a self-defense claim arising out of domestic abuse.

III. FAILURE TO CONSIDER COERCIVE CONTROL WOULD THREATEN THE EFFECTIVENESS OF VICTIM PROTECTION.

²⁰ Hawaii Rev. Stat. § 586-1.

²¹ California Family Code § 6320(c).

Not only would the recognition of coercive control by this Court carry forward the holdings that Minnesota courts have adopted in the cases described in section II(A) above, the failure to recognize the concept would pose additional threats to abuse victims in both criminal and civil contexts.

A. Coercive Control Can Be a Critical Consideration in Criminal Cases.

The definition of “imminent danger” as “immediate danger” in the context of self-defense would improperly foreclose a jury from fully considering the effects of coercive control. According to this Court, a self-defense claim turns on the “quality of [the defendant’s] judgment with respect to the danger to be apprehended from others and the alternative methods by which the danger could have been avoided.” *State v. Boyce*, 170 N.W.2d 104, 112-13 (Minn. 1969). The test is whether an “ordinary reasonable person would consider killing necessary to avert the danger of death or grievous bodily harm.” *Id.* at 113.

To address this question in the context of domestic abuse and self-defense, the juror—the “ordinary reasonable person”—would need to consider not only the *immediate* danger of bodily harm but also the coercive control of the abuser over the victim and the *imminent* danger that that control creates. Reviewing physical violence in a vacuum without examining it through the lens of coercive control does a disservice to the victims of domestic abuse because it fails to properly contextualize the violence within the relationship. The violence and coercive control by the perpetrator are not singular events, but exist as a pattern and practice of behavior that continually repeats itself.

In the mind of a jury determining whether an act is necessary to resolve an imminent danger, the concept of coercive control can alter the level of danger being faced by the individual and affect the quality of the victim's judgment "with respect to the danger to be apprehended." See *Boyce*, 170 N.W.2d at 112-13. Consideration of coercive control permits the jury to address *both* a person's immediate physical danger *and* the imminent danger arising from the person's isolation separation from possible avenues of assistance. The physical danger does not pass away instantly upon the resolution of the immediate event because the abuser controls the victim, and the victim has no means by which to curtail the abuse. When coercive control is added to the context of physical domestic abuse, a jury may reasonably conclude that that element extends the period of "imminent danger" with respect to any violent incident. The violent incident will not end merely when the perpetrator has moved from one room to the next; the threat of imminent harm is constant where there are elements of coercive control.

Tubman urges this Court to make clear that, assuming the supporting evidence is there, coercive control is a factor that a jury may consider in addressing a claim of self-defense in a criminal case. Specifically, a jury should be able to consider that:

- a person experiencing coercive control may have limited means to remove themselves from danger;
- a person subject to coercive control may be more likely to reasonably believe they are in imminent danger of harm because they lack the ability to remove themselves from danger; and
- the coercive control exercised by the abuser would influence the victim's understanding of how imminent death or great bodily harm was at a given moment.

The use of a self-defense standard that requires “immediate danger,” like the instruction the district court gave here, does not allow the jury to consider any of these things.

B. Coercive Control Can Be a Critical Consideration in Civil Protection Proceedings.

Although the present appeal arises from a criminal prosecution, this Court’s decision concerning “imminent” and “immediate” danger is likely to have substantial effects in the civil protection context as well, in particular on courts’ ability to protect domestic abuse victims from the dangers arising from coercive control. Several of Minnesota’s civil protective actions employ or echo the same “imminent” and “immediate” language at issue here. *See, e.g.*, Minn. Stat. 518b.01, subd. 2(a)(2) (defining domestic abuse in part as “the infliction of fear of imminent physical harm, bodily injury, or assault.”); *cf. also* Minn. Stat. 518B.01, subd. 7 (permitting *ex parte* order if petition “alleges an immediate and present danger of domestic abuse[.]”). Tubman anticipates that the Court’s treatment of that language here will be argued to affect the interpretation of those statutes as well.

As the cases cited in section II(A) above show, Minnesota courts addressing requests for civil orders of protection have historically interpreted the definition of the statutory term “imminent” *not* to mean “immediate,” or “in the moment,” in part due to elements of what we now recognize as coercive control. For example, in the *Butler* case discussed above, the district court relied on the history of the parties to determine that a present fear of imminent harm existed. *See Butler*, 977 N.W.2d at 872. If the district court and the Court of Appeals in *Butler* had been compelled to read imminent to mean

“immediate” and could not have taken into account the past relationship (which included elements of coercive control), then the alleged abuser’s need to go home to get his gun would have foreclosed any finding that the victim was in fear of “imminent” harm.

Indeed, this would be the result in any case in which an abuser tells a victim that they intend to kill or injure them sometime in the future. Such victims could not have a reasonable fear of “immediate” harm, because they would not be hurt “in the moment.” But they could still have a reasonable fear of “imminent” harm—based on the parties’ prior history and coercive control—that should be sufficient to support an order for protection. This Court should uphold the Court of Appeals determination that imminent does not mean immediate and thus preserve the ability of the courts to issue these civil protection orders for protection to victims who are in fear of imminent physical harm, bodily injury, or assault due to coercive control within their relationships.

The need for such a rule is reenforced by the procedure victims employ to obtain protective orders. Applications for orders for protection generally are not filed while the alleged abuser is in the immediate vicinity of the applicant. Oftentimes a victim will seek assistance from a domestic abuse agency or an attorney that assists with the submission of the application for an order for protection. While the victim is at the agency or with the attorney and preparing the order for protection request, they may believe they are in fear of “imminent danger,” but they would certainly not be in fear of “immediate danger.” To hold that imminent and immediate are synonymous would undercut victims’ ability to obtain an order for protection based on a reasonable fear arising out of coercive control,

because it would fail to recognize how a past history of abuse and coercive control can result in a present fear of imminent, but not immediate, harm.

CONCLUSION

A reversal of the Court of Appeals decision and a reinstatement of Ms. Clark’s conviction would send two troubling messages to domestic partners in relationships characterized by coercive control:

- To victims, that they cannot use lethal force even when coercive control prompts a reasonable and justified fear that lethal force will be used against them, and
- To abusers, that they have yet another possible avenue of coercive control over victims: the threat of criminal prosecution.

By confirming that “imminent” harm is an inclusive term that includes the systematic buildup of coercion over time, the Court would allow abuse survivors seeking protection from the courts—in both the criminal and civil contexts—to show the patterns and history of abuse in a way that is often overlooked in courts’ reflexive focus on narrow issues of evidence of specific incidents.

Tubman therefore urges the Court to affirm the result reached by the Minnesota Court of Appeals and to make clear that coercive control is a factor that a jury may consider in determining whether a defendant was in “imminent danger” in the context of a claim of self defense.

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**STATE OF MINNESOTA
IN SUPREME COURT
A22-0611**

State of Minnesota,
Appellant,

vs.

Stephanie Louise Clark,
Respondent.

PROOF OF SERVICE

I hereby certify that on December 18, 2023, I electronically filed the Brief of Amicus Curiae Tubman via the Supreme Court of Minnesota's E-MACS system. I additionally certify that all participants in the case who are registered E-MACS users and that service will be accomplished by the E-MACS system.

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