STATE OF MINNESOTA
IN SUPREME COURT
CASE NO. A22-0611

STATE OF MINNESOTA,

Appellant,

vs.

STEPHANIE LOUISE CLARK,

Respondent.

BATTERED WOMEN'S JUSTICE PROJECT'S AMICUS BRIEF

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STATEMENT OF INTEREST

Battered Women's Justice Project ("BWJP") is a collective of national policy and practice centers which provide training and resources for advocates, battered women, legal system personnel, policymakers, and others engaged in the justice system response to intimate partner violence and other forms of gender-based violence.[1] BWJP promotes systemic change within the civil and criminal justice systems to ensure an effective and just response to victims of intimate partner violence and their families. BWJP seeks to ensure that victim defendants receive the full benefit of the rights and protections designed to protect the rights of all accused persons to fair trials, accurate verdicts, and equitable legal outcomes.

BWJP has an important stake in ensuring that the ultimate decision in this case, like that in any case involving a victim defendant, is the product of a properly informed and instructed jury. The outcome of this case is critically important not only for Stephanie Clark, but also for all victims charged with crimes whose experiences of abuse are relevant to the crimes for which they are charged.

INTRODUCTION

Battering, sometimes referred to as "intimate partner violence" or "domestic abuse," harms millions of people each year. The impacts of battering go far beyond physical injury and trauma. One of battering's most insidious consequences occurs when victims of

[1]Pursuant to Minnesota Rule of Civil Appellate Procedure 129.03, Battered Women's Justice Project certifies that no counsel representing a party in this case authored this amicus brief in whole or in part, and no person or entity other than Battered Women's Justice Project, its members, or its counsel, made a monetary contribution to the preparation or submission of this brief.

battering are forced to protect themselves against their abusive partners and are then charged with crimes for having done so.

Here, Stephanie Clark was forced to defend herself against her abusive partner and then convicted of second-degree intentional murder based on a jury instruction, provided in response to a juror question, that misstated the law of self-defense. The District Court improperly instructed the jury that: "To fear imminent great bodily harm or death means that the person must fear that such harm will occur immediately." The Court of Appeals correctly held that this instruction was improper. Indeed, by equating "imminent" with "immediate," not only did the District Court misstate Minnesota law, but significantly, it provided an instruction that ignores the unique facts and circumstances particular to each case, including how battering affects an individual's understanding of danger.

This Court should therefore affirm the decision of the Court of Appeals.

ARGUMENT

I. Policy Considerations Strongly Disfavor the District Court's Instruction on "Imminent" Harm.

As set forth in Respondent Clark's brief, the District Court's definition of "imminent" ignores Minnesota precedent on the law of self-defense. If adopted, the District Court's instruction that "imminent" means "immediate" would have particular impact in cases where the defendant is a victim of intimate partner violence. Specifically, by improperly narrowing the temporal scope relevant to the defendant's fear of harm, the District Court's instruction would preclude future factfinders from engaging in full

consideration of the realities of intimate partner violence and the effects of battering on its victims.

This Court should consider the impact its decision may have on victims of abuse and their ability to legally defend themselves from imminent harm. And importantly, understanding the prevalence and nature of battering and its effects is critical to understanding the policy implications of narrowing the definition of imminent.

A. Intimate Partner Violence Is a Daily Reality for Many Women, Men, and Children.

Intimate partner violence is too common—it harms millions of women, men, and children each year. In the United States, about two in five women and one in four men experience intimate partner violence and a related impact during their lifetime. *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Intimate Partner Violence*, Ctrs. for Disease Control and Prevention 11 (2022)[2] (listing related impacts such as injury, PTSD symptoms, concern for safety, fear, needing help from law enforcement, and missing at least one day of work) ("NISVS Report"). More than one in three women have children living in their household when they experience intimate partner violence. *Id.* at 14. About 6.8 million women reported that their child had seen or heard them being insulted, humiliated, threatened with physical harm, pushed, slapped, hit, or punched by their current or former intimate partner. *Id.*

While intimate partner violence harms all people, the prevalence of intimate partner violence is disproportionately high for women. *See Domestic Violence/Intimate Partner*

[2] Available at https://www.cdc.gov/violenceprevention/pdf/nisvs/NISVSReportonIPV_2022.pdf.

Violence Facts, Emory Univ. Sch. of Med.[3] (stating that 85% of intimate partner violence victims are women). In the United States, each day more than three women are killed by a current or former intimate partner. Erica Smith, *Female Murder Victims and Victim-Offender Relationship, 2021*, Bureau of Just. Stats. 1 (Dec. 2022)[4] (noting that the percentage of women murdered by an intimate partner was five times higher than for men). And since the pandemic, those numbers are only rising. There was an 8.1% increase in reported incidents of domestic violence during the pandemic, and many more incidents remain unreported. *Domestic Violence During COVID-19: Evidence from a Systematic Review and Meta-Analysis*, Council on Crim. Just. (Feb. 2021).[5]

Our legal systems do not protect these women and instead frequently perpetuate more harm against them. Female survivors are often arrested, prosecuted, and incarcerated as a direct or indirect result of the abuse they suffered. *See, e.g.*, Inès Zamouri, *Self-Defense, Responsibility, and Punishment: Rethinking the Criminalization of Women Who Kill Their Abusive Intimate Partners*, 30 UCLA J. of Gender & L. 203, 206 (2023); Connie Neal, *Women Who are Victims of Domestic Violence: Supervision Strategies for Community Corrections Professionals*, 69 Corrs. Today 38, 39 (2007) (survivors' crimes are either directly related to domestic violence, such as killing their abuser or indirectly related to the

[3] Available at https://med.emory.edu/departments/psychiatry/nia/resources/domestic_violence.html (last visited Dec. 8, 2023).
[4] Available at https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/fmvvor21.pdf.
[5] Available at https://build.neoninspire.com/counciloncj/wp-content/uploads/sites/96/2021/07/Domestic-Violence-During-COVID-19-February-2021.pdf.

violence, such as failure to protect children from abuse). These women are likely to be incarcerated for *responding* to abuse violently as a form of self-defense or tactic to escape coercive situations. *See* Stephanie Covington & Barbara Bloom, *Creating Gender-Responsive Services in Correctional Settings: Context and Considerations*, Paper Presented at the American Society of Criminology Conference 2 (2004)[6] (noting battering as a theme among female prisoners). Sixty percent of female state prisoners nationwide, and as many as 94% of certain female prison populations, have a history of physical or sexual abuse. Zamouri, *supra*, at 205. Ninety percent of women in prison for killing men have been battered by those same men. *Id.* at 205–06. In addition, "female defendants typically receive longer sentences for killing their male partners than male defendants receive for killing their female partners." *Id.* at 209.

The District Court failed to permit the factfinder to consider survivor-defendants' social context and unique circumstances, and such errors result in criminalization instead of protection.

B. Battering and Its Effects Are Uniquely Complex and Prone to Misunderstanding.

The term "battered woman syndrome" was first coined in the late 1970's by Dr. Lenore Walker. Dr. Walker used the term to describe the psychological and behavioral traits common to women who are exposed to severe, repeated domestic abuse. Her early work focused on some of the phenomena she identified in her research on women accused of killing their abusive partners. One such phenomena was the "cycle of violence," which

[6] Available at https://www.centerforgenderandjustice.org/site/assets/files/1534/2.pdf.

refers to a repeating pattern commonly seen in abusive relationships—a honeymoon stage, followed by a tension-building stage, followed by an abusive incident, and finally remorse by the abusive partner. *See generally* Lenore E. A. Walker, *The Battered Woman* (1979); Lenore E. A. Walker, *The Battered Woman Syndrome* (1984). Although "battered woman syndrome" provided a framework for victim defendants to introduce the impact of their experiences of abuse into evidence, it did not adequately capture the experiences, beliefs, perceptions, or realities of victims' lives.

Since the 1970's, the field has moved away from the term "battered woman syndrome" and toward the term "battering and its effects" because "battered woman syndrome" incorrectly implies that all women who experience abuse react in the exact same way and suffer from a common "syndromic" malady. *See* Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 Hofstra L. Rev. 1191, 1196 (1993); *People v. Humphrey*, 921 P.2d 1, 7 n.3 (Cal. 1996). Instead, the variety of responses that victims of battering display are reasonable responses to highly unreasonable situations. For that reason, researchers and experts, including BWJP, use the term "battering and its effects" to describe the experiences, beliefs, perceptions, and realities of the lives of battered women, men, and children. *See, e.g.*, Mary Ann Dutton, *Update of the "Battered Woman Syndrome" Critique*, VAWnet (Aug. 2009);[7] Dutton, *Women's Responses*, *supra*; U.S. Dep't of Just. & U.S. Dep't of Health & Hum. Servs., *The Validity and Use of Evidence Concerning Battering*

[7] Available at https://vawnet.org/sites/default/files/materials/files/2016-09/AR_BWSCritique.pdf.

and Its Effects in Criminal Trials: Report Responding to Section 40507 of the Violence Against Women Act, NCJ No. 160972 (May 1996);[8] Evan Stark, *Re-Presenting Woman Battering: From Battered Woman Syndrome to Coercive Control*, 58 Alb. L. Rev. 973, 975–76 (1995).

The experiences, beliefs, and realities of the lives of battered women are complex and susceptible to misunderstanding. When used to support an affirmative defense, evidence of battering and its effects can assist jurors in accurately assessing levels of danger, or in otherwise evaluating the objective reasonableness of the actions of a defendant claiming self-defense or other affirmative defenses. This evidence can help jurors interpret puzzling victim behavior and remedy misconceptions about battering and its effects that may be in play in the criminal case. *See, e.g.*, Zamouri, *supra*, at 226 (for example, if a woman stays with her abuser, a juror might mistake her staying as a sign of submission when rather it is a sign of "the abused woman's distinct cleverness, sharp observation skills, and sound survival instinct").

At the same time, however, this evidence is often misunderstood because lay people generally believe they already understand the dynamics of violence within an intimate relationship. Jurors are likely to confidently rely on their own "common sense," which results in inaccurate conclusions and unjust verdicts. Jurors and other lay people may not realize that their beliefs and assumptions about battering are wrong, and they will evaluate evidence without considering the ways that a victim's circumstances factually differ from

[8] Available at https://www.ojp.gov/pdffiles/batter.pdf.

those of a non-victim. *See* Kathleen J. Ferraro & Noël B. Busch-Armendariz, *The Use of Expert Testimony on Intimate Partner Violence*, VAWnet 1 (Aug. 2009)[9] (citations omitted) (battering "is a complex phenomenon that is not easily understood or encapsulated in a syndrome or psychological diagnosis," and "in cases involving survivors . . . the facts often diverge from common sense understanding and from what the general public believes about survivors of abuse"). In legal settings in particular, misconceptions about battering and its effects are rampant. Material misstatements of the law, such as defining "imminent" as "immediate," greatly exacerbate the barriers that victims face in achieving just legal outcomes.

As set forth in more detail in Respondent's brief, here, the instruction of "imminent" to mean "immediate" "placed a thumb on the scale" in this case, hindering Ms. Clark's ability to prove self-defense. *See State v. Clark*, No. A22-0611, 2023 WL 2637490, at *3 (Minn. App. Mar. 27, 2023), *rev. granted* (June 28, 2023); *see also* Resp. Br. at 45–46. Without this instruction, the jury could have considered whether Mr. Butler's history of violence, escalating violence on the day of the murder, and threats of violence "tonight" created an actual and honest belief that Ms. Clark was in imminent danger of great bodily harm—even if it found that harm was not temporally immediate.

[9] Available at https://vawnet.org/sites/default/files/materials/files/2016-09/AR_ExpertTestimony.pdf.

C. Victims of Different Forms of Abuse Are Not Served by a Narrowed or Special Definition of "Imminent."

By incorrectly defining "imminent," the District Court undermined legal protections for victims of many types of abuse who are forced to defend themselves against actual and deadly violence. If this Court sets forth a narrower definition of "imminent" to be used in self-defense cases, or a special definition only applicable to victims of abuse, other areas of the criminal judicial system that rely on a definition of "imminent" could be negatively impacted.[10] A narrower or special definition may impact abuse victims seeking orders for protection, victims accused of parental kidnapping, and victims of human trafficking by creating additional barriers to legal protection.

Significantly, victims of domestic abuse and intimate partner violence seeking orders for protection against their abusers will be harmed by a rigid definition of "imminent." Under domestic abuse acts, including Minnesota's, an order for protection is generally available upon a showing of "actual or imminent domestic violence" or if the petitioner shows that she is in imminent danger of further abuse. *See, e.g.*, Minn. Stat. § 518B.01, subd. 2(a)(2) (2022); N.D. Cent. Code § 14-07.1-02(4) (2022); Ohio Rev. Code Ann. § 3113.31(A)(1)(a)(ii) (2022); Or. Rev. Stat. § 107.705(1)(b) (2022); Kan. Stat. Ann. § 60-3102(a)(2) (2022). The key goal of civil orders for protection is to prevent death and serious injury. However, if a court reads an "immediacy" requirement into the definition

[10] Minnesota courts may look to other statutes upon the same or similar subjects to interpret a term. *See Harris v. County of Hennepin*, 679 N.W.2d 728, 732 (Minn. 2004); *see also, e.g.*, *State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999) ("The doctrine of *in pari materia* is a tool of statutory interpretation that allows two statutes with common purposes and subject matter to be construed together to determine the meaning of ambiguous statutory language.").

of "imminent," a woman experiencing intimate partner violence may not be able to get the legal assistance she needs to protect herself or her children. To effectuate the purpose of an order for protection and prevent a victim's death or serious injury, a flexible definition of "imminent" affords more victims of intimate partner violence legal protection from such abuse.

In addition, a narrow definition of "imminent" could increase criminalization of abuse victims who flee their abusers with their children. Certain types of parental kidnapping statutes criminalize a parent's flight with children in violation of a court order, or even in the absence of a court order. *See* National Clearinghouse for the Defense of Battered Women, *The Impact of Parental Kidnapping Laws and Practice on Domestic Violence Survivors* 11 (Aug. 2005). However, some state parental kidnapping statutes include exemptions or defenses, such as "flight from imminent harm." *Id. See also, e.g.*, D.C. Code § 16-1023(a)(2) (2022) ("No person violates this subchapter if the action . . . [i]s taken by a parent fleeing from imminent physical harm."); Nev. Rev. Stat. § 200.359 (2022) (parental kidnapping statute does not apply to a parent who removes the child to protect the child from "imminent danger of abuse" or themselves from "imminent physical harm"); Colo. Rev. Stat. § 14-13.5-107 (2022) (in a hearing on a petition under Colorado's child abduction prevention act, the court will consider evidence that respondent's conduct was necessary to avoid imminent harm to the child or respondent); Cal. Penal Code § 207 (2022) (kidnapping statute does not apply to act that is "taken to protect the child from danger of imminent harm").

Proving an imminent harm defense against a parental kidnapping charge is already challenging for criminalized victims under existing definitions. Establishing the elements of an imminent harm defense can be difficult for victims who often lack physical documentation or corroboration of their prior abuse history, such as a police report, medical records, or a past criminal conviction of their abuser. *See The Impact of Parental Kidnapping Laws and Practice on Domestic Violence Survivors*, *supra*, at 22; Karla Fischer, *Domestic Violence Expert Witnesses: Overcoming Challenges in Battered Women's Self-Defense Cases* 15 (Dec. 2016).[11] Moreover, factfinders "may not believe that a battered woman's flight meets the legal standard of flight to avoid 'imminent physical harm' . . . [because] [s]uch language fails to capture the ongoing dynamics of power and control in domestic violence cases." *The Impact of Parental Kidnapping Laws and Practice on Domestic Violence Survivors*, *supra*, at 22. Prohibiting a factfinder from considering the recurring abuse that forces a parent to flee an abuser with her children creates additional barriers to an abuse victim accessing legal protection for herself and her children.

Further, unjust legal outcomes will similarly occur for trafficking victims if factfinders are unnecessarily restricted to considering only the immediate risks that trafficking victims face. Risk analysis in human trafficking cases depends upon the unique facts of each case, and it is important for factfinders within the legal system to have flexibility to consider all factors influencing the risks a human trafficking victim faces. *See*

[11] Available at https://drive.google.com/file/d/1WRZJ-ZhWI9amkVj7rpaUZ5igtNzE73j5.

United Nations Office on Drugs and Crime, *Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 5* at 2 (2009).[12]

In addition to the affirmative defenses specifically available to trafficking victims, victims may also raise the defense of duress, asserting that their alleged criminal conduct resulted from "coercion by the use or threat of unlawful force by another." Alaina Richert, *Failed Interventions: Domestic Violence, Human Trafficking, and the Criminalization of Survival*, 120 Mich. L. Rev. 315, 325 (2021). Similar to self-defense, duress defenses typically require defendants to prove that they had a reasonable belief that they faced "imminent" danger of death or serious bodily harm when they committed the alleged crime. *Id.*; *see, e.g.*, Ind. Code Ann. § 35-41-3-8 (2022) (duress defense available if defendant is compelled to engage "by threat of imminent serious bodily injury"); N.Y. Penal Law § 40.00 (2022) (duress defense available when defendant is coerced to engage in conduct "by the use or threatened imminent use of unlawful physical force").

Like victims of intimate partner violence who are charged with crimes that derive from the abuse they suffered, victims of trafficking often face arrest, prosecution, or incarceration for crimes that their traffickers force them to commit. *See, e.g.*, Office to Monitor and Combat Trafficking in Persons, U.S. Dep't of State, *The Use of Forced Criminality: Victims Hidden Behind the Crime* (June 2014)[13] (stating that charged crimes may include theft, prostitution, drug production and transport, terrorism, and murder). Thus,

[12] Available at https://www.unodc.org/documents/human-trafficking/TIP_module5_Ebook.pdf.
[13] Available at https://2009-2017.state.gov/documents/organization/233938.pdf.

a strict interpretation of "imminent" may deprive trafficking victims of additional legal protection.

Accordingly, narrowing the definition of "imminent" will have far-reaching negative impacts for victims of many types of abuse, restricting the ability of factfinders to consider relevant circumstances and limiting the means of protection available to abuse victims.

II. There Is an Established Framework for "Imminent" Under Minnesota Law.

Minnesota has a long-standing, well-established framework for analyzing self-defense claims that compels a factfinder to look to the defendant's actual and honest fear of imminent danger of death or great bodily harm and the unique facts and circumstances causing that fear to determine the reasonableness of the defendant's actions. *See State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006) (articulating four-part test to determine whether deadly force was reasonable). This framework permits factfinders to acknowledge the harm and trauma that victims of intimate partner violence face for protecting themselves and their children.

As the Court of Appeals recognized, narrowing the definition of "imminent" is inconsistent with that framework; rather, under Minnesota law, the term "imminent" allows the factfinder to consider the facts and circumstances particular to each case, including the effects of intimate partner violence. By contrast, the term "immediate," limits a jury's considerations to the temporal proximity of harm, and inhibits a factfinder's ability to account for a defendant's "very particular circumstances causing fear," such as the defendant's intimate relationship history with the decedent or a pattern of battering. *State*

v. Bjork, 610 N.W.2d 632, 636–37 (Minn. 2000). Therefore, the Court should decline to adopt a definition of "imminent" that is inconsistent with its self-defense law precedent.

A. Minnesota's Framework Instructs the Factfinder to Consider a Defendant's History of Intimate Partner Violence.

Minnesota law permits the use of reasonable force against another "when used by any person in resisting or aiding another to resist an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2020). Deadly force may be used "when necessary in resisting or preventing an offense which the actor reasonably believes exposes the actor or another to great bodily harm or death." Minn. Stat. § 609.065 (2020). To interpret section 609.065, this Court articulated a four-part test for using deadly force in self-defense, which takes into account a defendant's subjective belief. *See Johnson*, 719 N.W.2d at 629; *see also* Resp. Br. at 29 (providing the four-element test for using deadly force in self-defense). As this Court recognized in *Bjork*, "[t]he elements of self-defense are by nature very specific to the person apprehending fear and the very particular circumstances causing fear." 610 N.W.2d at 636–37 (citation omitted); *see also State v. Boyce*, 170 N.W.2d 104, 112–13 (Minn. 1969) (stating that whether "it was necessary to avert death or grievous bodily harm . . . turns on the character of the danger to be apprehended and the available alternatives").

Under the second element of the self-defense test, the defendant's actual and honest belief that she was in imminent danger of death "is subjective and depends upon [her] state of mind." *Johnson*, 719 N.W.2d at 630 (citation omitted); *see also, e.g.*, *Hassan v. State*, No. A21-1645, 2022 WL 2125507, at *1 (Minn. App. June 13, 2022), *rev. denied* (Minn.

Aug. 23, 2022) (quoting *Johnson,* 719 N.W.2d at 630); *State v. Ward*, No. A15-1000, 2016 WL 3375922, at *2 (Minn. App. June 20, 2016) (same). A defendant's state of mind with respect to her belief may be established circumstantially. *Johnson*, 719 N.W.2d at 630–31. The fact that a defendant who has acted in self-defense was abused by her partner is a relevant "particular circumstance[]" causing the defendant fear. *Bjork*, 610 N.W.2d at 636–37. Because a defendant's victimization by an intimate partner is probative of her fear, the factfinder should consider her relationship with the decedent, including any history of abuse that preceded her act of self-defense.

Furthermore, evidence of "specific acts of violence is admissible where commonsense indicates that these acts could legitimately affect a defendant's apprehensions." *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017) (quotation omitted). In intimate relationships that involve partner violence, it is commonsense that a decedent's acts of abuse legitimately affect a defendant's fear of harm. A defendant knows her abuser on a personal level and her familiarity with him significantly enhances her ability to predict danger. *See* Kit Kinports, *So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense*, 23 St. Louis Univ. Pub. L. Rev. 155, 181 (2004) (explaining that a woman becomes "hypersensitive" to her abuser's behavior and to signs of physical danger such that she can recognize the imminence of an attack when others without her experience would not). The second element therefore compels the factfinder to consider a defendant's history of abuse by the decedent to evaluate whether she reasonably feared great bodily harm.

Accordingly, applying well-established Minnesota caselaw, the definition of imminent permits the factfinder to consider a number of factors relevant to victims of violence and abuse, such as:

- A defendant's history of abuse;
- A defendant's personal relationship with her abuser;
- How a defendant's familiarity with her abuser's behaviors heightens her ability to predict danger; and
- How the facts and circumstances of the parties' relationship affect a defendant's perception of danger.

It is the totality of these and other factors—not a rigid definition—that provides an appropriate framework for a jury to determine whether a defendant's fear was actual, honest, and reasonable. Evidence of the unique circumstances of the relationship equips a jury to "place itself figuratively in the defendant's shoes and determine the reasonableness of the defendant's belief from the facts and circumstances as the defendant perceived them." Kinports, *supra*, at 165 (citing *People v. Seeley*, 720 N.Y.S.2d 315, 321 (N.Y. Sup. Ct. 2000)). Because the District Court embedded a narrow temporal requirement into the term "imminent," the factfinder was unable to consider the totality of the above-mentioned factors when determining whether Ms. Clark's fear was actual, honest, and reasonable and it instead discredited her trauma and perpetuated further harm against her.

In addition, the State's advocacy for a special instruction for abuse victims places an additional burden on victims who assert self-defense. (*See* Appellant Br. at 14 (requesting a special instruction "when the circumstances of the case involve a history of intimate partner violence and the effect that violence could have on the defendant.").) Not

only would a special instruction be contrary to law, it would create additional barriers for victims to show entitlement to such instruction—in essence, requiring them to prove their victim status in addition to the justified use of self-defense. Instead, jurors should be able to consider the facts and circumstances, such as battering and its effects, on an individual basis under the current framework for "imminent" harm.

B. The Court of Appeals Correctly Held That the District Court Materially Misstated the Law.

The Court of Appeals correctly held that the District Court materially misstated the law "because it incorrectly instructed the jury that 'imminent' means 'such harm will occur immediately.'" *State v. Clark*, No. A22-0611, 2023 WL 2637490, at *3 (Minn. App. Mar. 27, 2023), *rev. granted* (June 28, 2023). The Court of Appeals found no legal basis for this "erroneous instruction," and noted the need for courts to use "analytic precision" when instructing on self-defense. *Id.* (quoting *State v. Hare*, 575 N.W.2d 828, 833 (Minn. 1998)). Absent a precise definition of "imminent," the Court of Appeals stated that the "district court should have tailored its instructions to the particular facts" of the case. *Id.* at *4. The Court of Appeals noted that neither caselaw nor this Court has specifically defined the term "imminent" in the law of self-defense, but instead that Minnesota law sets forth a "totality of the circumstances" framework. *Id.* at *3. The Court of Appeals correctly held that the analysis should have included "a temporal component guided by the unique facts of each case," and "'turn[ed] on the character of the danger to be apprehended.'" *Id.* (quoting *State v. Boyce*, 170 N.W.2d 104, 113).

As the Court of Appeals recognized, Minnesota law already permits factfinders analyzing a self-defense claim to consider the unique facts of each case. Under such an analysis, a factfinder may consider circumstances including any history or pattern of battering that influences a defendant's apprehension of danger. The Court of Appeals accurately held that the "district court materially misstated the law of self-defense by defining 'imminent' as 'immediately' and by failing to tailor the instruction to the unique circumstances of the case." *Id.* at *1. This holding is consistent with the framework set forth in Minnesota caselaw that requires an analysis specific to the person apprehending the danger and her unique circumstances.

III. Courts Across the Country Also Differentiate "Imminent" from "Immediate."

Minnesota state law on imminence comports with that of jurisdictions across the country that have correctly rejected the argument advanced by the State in the Court of Appeals that "imminent" means "immediate."[14] Courts in other jurisdictions, in alignment with the Minnesota Court of Appeals, recognize that conflating these terms represents a material misstatement of the law of self-defense.

These jurisdictions acknowledge the temporal distinction between the terms "imminent" and "immediate," and the substantial impact of this differentiation on a factfinder's subjective analysis of whether a defendant believed she was in danger of death or great bodily harm. For example, in *Porter v. State*, a case in which a woman killed her husband, the Maryland Court of Appeals found the "temporal distinction between

[14] The State waived the argument it raised in the Court of Appeals that "imminent" means "immediate" by failing to make the argument in this Court.

imminent and immediate persuasive—an imminent threat is not dependent on its proximity to the defensive act. Rather, it is one that places the defendant in imminent fear for her life." 166 A.3d 1044, 1059 (Md. 2017).

Additionally, courts in other jurisdictions instruct juries to consider an abuser's prior acts of violence in determining whether a defendant's apprehension of danger at the time of the encounter was reasonable. In *State v. Hundley*, a case in which a woman killed her abusive husband, the Kansas Supreme Court held that the use of the word "immediate" in the perfect self-defense jury instruction, instead of the word "imminent," as required by the applicable statute, constituted reversible error. 693 P.2d 475, 477, 480 (Kan. 1985). The court explained that "immediate" "places undue emphasis on the immediate action of the deceased, and obliterates the nature of the buildup of terror and fear which had been systematically created over a long period of time." *Id.* at 479.

Other states, too, recognize this "buildup" and how a self-defense analysis may require a factfinder to consider circumstances that span a lengthy period of time. In *State v. Crigler*, a case in which a woman shot and killed her boyfriend through a door, the Washington Court of Appeals held that a jury instruction limiting the jury's consideration to only those acts occurring immediately before the killing was erroneous. 598 P.2d 739, 741 (Wash. Ct. App. 1979). The court reasoned, "the gravity of the danger" to the defendant must instead be "measured by all the surrounding circumstances which had occurred during the several months preceding the slaying." *Id.*

The Washington Supreme Court has explained that a "jury is entitled to consider [a]ll of the circumstances surrounding the incident in determining whether (the) defendant

had reasonable grounds to believe grievous bodily harm was about to be inflicted." *State v. Wanrow*, 559 P.2d 548, 556 (Wash. 1977) (en banc) (quoting *State v. Lewis*, 491 P.2d 1062, 1064 (Wash. Ct. App. 1971)). The court has held that "limiting the jury's consideration of the surrounding acts and circumstances to those occurring 'at or immediately before the killing'" constitutes an erroneous statement of the law. *Id.* The court further elaborated on the distinction between "imminent" and "immediate" in *State v. Janes*, a case in which a son killed his abusive stepfather. 850 P.2d 495 (Wash. 1993) (en banc). The court stated that "imminent" has less to do with proximity in time than "immediate." *Id.* at 506. Quoting Webster's Dictionary, the court explained that "imminent" is defined as "hanging threateningly over one's head" or "menacingly near." *Id.*

Further, courts have underscored that the threat of danger in a self-defense analysis depends not on whether the danger is in fact imminent, but rather, on whether the defendant reasonably believes it so. For example, the Court of Criminal Appeals of Oklahoma in *Bechtel v. State* explained that "the issue [in intimate partner violence cases] is not whether the danger was in *fact* imminent, but whether, given the circumstances as she perceived them, the defendant's *belief was reasonable that the danger was imminent*." 840 P.2d 1, 12 (Okla. Crim. App. 1992).

Courts have held in a variety of circumstances that the "imminent" requirement may be satisfied, even when the facts did not present evidence of immediately threatened danger. *See, e.g.*, *Robinson v. State*, 417 S.E.2d 88, 91 (S.C. 1992) (holding the imminent requirement may be satisfied "when a battered woman believes she is in imminent danger of death or serious bodily harm even though her batterer is not physically abusing her");

State v. Leidholm, 334 N.W.2d 811, 817 (N.D. 1983) (reasoning a self-defense instruction was warranted when defendant stabbed her husband while he slept because the state's self-defense statute requires "imminent," not "immediate" threat); *State v. Gallegos*, 719 P.2d 1268, 1273 (N.M. Ct. App. 1986) (holding a defendant who stabbed her abusive husband while he lay in bed was entitled to a self-defense jury instruction because she presented sufficient evidence that she was in "imminent danger"), *abrogated on other grounds by State v. Alberico*, 861 P.2d 192 (N.M. 1993).

Like Minnesota, other jurisdictions allow factfinders to determine whether a defendant actually and honestly believed she was in imminent danger of death or great bodily harm based on an analysis of the unique facts of a case. Recognizing that the nature of the elements of self-defense is specific to the person apprehending danger and their particular circumstances, the Court should preserve the interpretation of imminent that exists under current Minnesota caselaw.

CONCLUSION

Many victims of intimate partner violence are forced to defend themselves against abusive partners. It is thus imperative that this Court refrain from taking steps that may limit a factfinder's understanding of "imminent" harm or create other barriers for victims to establish self-defense. The term imminent is used in many contexts—from orders for protection to statutes protecting victims of human trafficking—and what the Court says on this issue is bound to affect many different types of victims. The District Court's jury instruction imposed a temporal requirement that failed to capture the particular dynamics of a victim's individual situation.

As Minnesota caselaw already sets forth the proper framework for understanding imminent harm, this Court need not further define or limit the term. The most appropriate standard is the one that is already in place, which accounts for the lived realities that many victims of intimate partner violence face. Therefore, this Court should affirm the decision of the Court of Appeals.

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limitations of Minn. R. Civ. App. P. 132. The response was prepared with proportional font, using Microsoft Word in Office 365, which reports that the brief contains 5,580 words.

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