

OFFICE OF THE RAMSEY COUNTY ATTORNEY

John J. Choi, County Attorney



345 Wabasha Street North, Suite 120 • St. Paul, Minnesota 55102
Telephone (651) 266-3222 • Fax (651) 266-3010

MEMORANDUM

DATE: August 2, 2018

TO: John Choi, Ramsey County Attorney *JK*

FROM: John Kelly, First Assistant Ramsey County Attorney and
Richard Dusterhoft, Adult Criminal Division Director *RD*

SUBJECT: In the Matter of the Death of Phumee Lee
CA File Nos. 062-0397421 and 062-0397422

I. Summary

On October 5, 2017 at 5:50 p.m., L.V. called 911 to report that Phumee Lee, age 28, her boyfriend and the father of her five children, had just held her and their five children at gunpoint in her house located at 464 Earl Street in Saint Paul, Minnesota. L.V. told the 911 operator that Mr. Lee had threatened to kill her and their children, that he had fired two shots inside the living room using a revolver and that he remained in possession of the handgun. This information was provided to responding officers from the Saint Paul Police Department (“SPPD”), including Officers Jordan Wild and Daniel Gleason.

At approximately 5:52 p.m., SPPD officers arrived and surrounded the 464 Earl Street house. At 6:10 p.m., the five children were safely removed from the house by SPPD officers. At 6:18 p.m., a man matching Mr. Lee’s physical description was seen heading towards nearby Euclid Street. Video from a neighbor’s private security camera shows a group of SPPD officers, including Officers Wild and Gleason, pursuing Mr. Lee on the sidewalk of Euclid Street. The officers can be heard ordering Mr. Lee to stop multiple times on audio taken from the BWC worn by Officer Wild.

The video shows Mr. Lee finally stop, turn, walk towards and face the officers and slightly raise his arms and then begin to walk towards them. He then is seen quickly reaching into his right front pants pocket and removing an object with his right hand. Some of the officers can be seen attempting to seek cover behind a tree while other officers remain unprotected on the sidewalk. Mr. Lee with his right hand, then points the object at the officers. Officers can be heard on audio from Officer Wild’s BWC, yelling at Mr. Lee to “drop it” and “show us your hands.”

At approximately 6:19 p.m., Officer Wild fired six rounds at Mr. Lee from his 12-gauge shotgun and Officer Gleason fired ten rounds at Mr. Lee from his AR-15 rifle. The video clearly shows a flash emanate from the object in Lee’s right hand immediately before he falls

down on the street. Video from Officer Wild's BWC taken immediately after the shooting and as Officer Wild is approaching Mr. Lee, shows a silver-plated Taurus .38 caliber, five-shot, revolver laying approximately 18 inches from Mr. Lee's right hand.

Paramedics arrived approximately one minute after the shooting and pronounced Mr. Lee dead at the scene. The Ramsey County Medical Examiner's Office determined that Mr. Lee died as the result of multiple gunshot wounds.

This Memorandum contains a description of the relevant evidence gathered by the Minnesota Bureau of Criminal Apprehension ("BCA") during its investigation of the shooting of Mr. Lee. As set forth below, the evidence gathered by the BCA includes statements given by officers and other witnesses, physical, DNA and ballistics evidence, and audio and video recordings taken from a private security camera and BWCs worn by some of the officers.

Based on our review of all of the presented evidence and for the reasons explained in this Memorandum, it is our opinion that the use of deadly force by Officers Gleason and Wild in this incident was justified by Minn. Stat. §609.066, subd. 2(1)-(3). Accordingly, we recommend that no criminal charges be brought against those officers related to this incident.

II. Events of October 4-5, 2017 and the Subsequent BCA Investigation

A. Incident at 464 Earl Street

1. Statement Given to BCA Investigators by L.V.

L.V. told investigators that she and her five young children, ages 7, 5, 3 and 2 years old and 9 months old, resided at a single-family, two story house located at 464 Earl Street. L.V. had been in a longstanding domestic relationship with Mr. Lee, the father of her five children. Mr. Lee resided at 1005 Lafond Avenue in Saint Paul but frequently stayed with L.V. and their children at the 464 Earl Street home.

On October 4, L.V. said that Mr. Lee was drinking alcohol and snorting cocaine at L.V.'s home. According to L.V., when Mr. Lee is under the influence of cocaine, he "always gets mad at me" resulting in "arguments and fighting." In order to avoid arguing with him, L.V. went to bed around midnight. Mr. Lee woke L.V. around 3:00 a.m. and began looking under her bed and accusing her of hiding someone in her bedroom closet. He then broke off a piece of wood from the bunkbed of L.V.'s children so he could fasten it to her bedroom window to prevent anyone from entering the house through that window. L.V. described Mr. Lee's behavior as "paranoid", which she said was typical when he was under the influence of cocaine.

During the night, L.V. heard Mr. Lee open the front door. He then ran upstairs and kicked open L.V.'s bedroom door and accused her of purposely leaving the front door unlocked to allow someone to enter the house. After approximately only one hour of sleep, L.V. woke up at 7:00 a.m. on October 5 to help her two oldest children get ready for school. After dropping off the two children at the school bus stop, L.V. returned home where she attempted to sleep. She was soon awakened by one of her younger

daughters. Mr. Lee was still at her house and he had removed her clothes from her bedroom closet in his attempt to find the unidentified person he angrily accused her of hiding.

At approximately 10:00 a.m., Mr. Lee briefly left the house to go to a liquor store to buy more alcohol. When he returned, he told L.V. to come downstairs where he continued to angrily accuse her of having romantic affairs with other men and called her derogatory names. During this time, Mr. Lee displayed a handgun to L.V. He directed his verbal tirades at L.V. while he walked around the house with the gun in his hand.

According to L.V., Mr. Lee was legally ineligible to possess a firearm and was facing firearm charges at that time in Hennepin County. One week earlier L.V. informed Mr. Lee that she didn't want to be with him and he then pulled out a gun and threatened to kill her. She did not report that incident to police because she hoped he would never do it again.

At approximately 1:00 p.m. while L.V. was holding her 9 month old son and with her 3 and 2 year old daughters present, Mr. Lee pointed his gun at L.V.'s head and said he would kill her. For the next four hours, Mr. Lee continued to point his gun at L.V. as he repeatedly accused her of cheating on him and interrogated her about her relationships. L.V. was very frightened by his behavior and was concerned for the safety of her children. She asked him to put down the gun before her two older daughters were scheduled to return home from school later in the afternoon, but he refused to do so.

At approximately 5:00 p.m., L.V. and her five children were in the living room. L.V. was sitting on a sofa and her children were sitting on an adjacent sofa. Mr. Lee was standing 4-5 feet away from L.V. when he pointed his gun at her head and fired one shot. L.V. ducked and the bullet struck the wall behind her. She begged him not to kill her and then he said, "Okay, I'll kill the kids first and then I'll kill you and then I'll kill me."

Mr. Lee continued to accuse L.V. of cheating on him which she again denied. He refused to believe her and then he walked to and from the kitchen at least three times to look out of the kitchen window. L.V. described his behavior in this instance as "paranoid". Prior to one of his visits to the kitchen he told L.V. that "I'll give you five seconds to run. So, run before I catch you and I kill you." L.V. chose not to run out of concern for the safety of her children.

Ten minutes later Mr. Lee fired a second shot at L.V. which missed and again hit the wall behind her. L.V. now believed he "wanted her dead for real" and knew she needed to escape. When he again walked to the kitchen to look out of the window she ran out of the house into the street where she flagged down J.G., a passing motorist who lived nearby. From J.G.'s car while parked in front of his nearby house, she called 911.

2. Statement Given to BCA Investigators by P.L.

P.L., then age 8, is the oldest of the five children of L.V. and Mr. Lee. P.L. told investigators that she heard Mr. Lee say, "he was gonna' kill my Mommy." P.L. said that she along with her mother and four siblings were sitting on the sofa when "my Daddy tried to kill my Mommy." P.L. witnessed Mr. Lee fire two shots from a gun at L.V. P.L. then said "Mommy ran." P.L. then grabbed her infant brother and brought him upstairs because she was so scared. P.L. said her siblings were also scared.

3. Statement Given to BCA Investigators by J.G.

J.G. told investigators that he was driving home from work on October 5, shortly before 6:00 p.m. on Earl Street, when he saw P.L. run towards his vehicle and bang on the front passenger side window of his red 2002 Toyota Highlander SUV. J.G. said P.L. asked to be let into his car because "my husband is trying to kill me." J.G. drove her to his nearby home where he called 911 and they awaited the arrival of the police. J.G. said that P.L. told him that her husband had shot at her two times. J.G. described P.L. as "pretty shook up."

4. Statement Given to BCA Investigators by G.X., as interpreted by Y.T.

Y.T. is the daughter of G.X. Since G.X. does not speak English, Y.T. acted as her mother's interpreter for purposes of the BCA interview. Y.T. told investigators that G.X. lived across the alley from 464 Earl Street. At approximately 4:00 p.m. on October 5, Y.T. said her mother was in her backyard washing vegetables when she heard a gunshot come from the house at 464 Earl Street. Y.T. said her mother then heard "commotions of people coming outside the house into a car, slamming the car doors and drove away."

5. Statement Given to BCA Investigators by A.T.

A.T. told investigators that he lives two houses away from 464 Earl Street. He said that he arrived home from work sometime between 5:45 p.m. and 5:50 p.m. on October 5. As A.T. was driving his vehicle onto his driveway located behind his house in the alley, a black Cadillac Escalade SUV with tinted windows was backing up towards his car and came within inches of hitting his car. A.T. honked his horn and accelerated his car both to avoid a collision. Because the windows of the Escalade were heavily tinted, A.T. could not identify the driver. But he said he recognized the Escalade as a vehicle that is frequently parked in the driveway of the 464 Earl Street house.

A.T. also said that he called the police "five times" in the past about physical fighting and other disturbances coming from 464 Earl Street, including most recently in August 2017. Although he did not know the names of the persons who occupied the property, he described a male whose description matched that of Mr. Lee. He suspected that drugs were being sold from 464 Earl Street because numerous different nice cars would come and go from the property at all hours of the day. He said that he and a neighbor once wrote down the license plate numbers of "maybe a hundred cars" that came and went from 464 Earl Street.

6. Statement Given to BCA Investigators by M.M and K.M.

M.M. and K.M. told investigators that they live next door to 464 Earl Street. K.M. said that on October 5, 2017, she heard a gunshot coming from inside the house at 464 Earl Street. K.M. said that approximately five minutes later she saw the Asian female who lives at 464 Earl Street running from the house and onto Earl Street. K.M. described the female as looking “frantic” and “frightened” and saw her pounding on the front passenger door of a red SUV telling the driver to “unlock the door” and to “let me in.” K.M. then saw the female enter the front passenger seat of the vehicle and then the vehicle drove away south on Earl Street.

K.M. said that there were random vehicles constantly stopping the 464 Earl Street house “all the time”, and that the Asian adult male resident would frequently leave the house for brief periods of time at all hours of the day and night. Both M.M. and K.M. suspected that the male was dealing drugs from the house. M.M. said that he once asked the male if he was a drug dealer, and the male said he was not, but then asked M.M if he “needed anything.” K.M. also told investigators that previously she had often heard loud, angry, verbal arguments coming from inside the 464 Earl Street house involving the Asian male and female.

B. SPPD Officers Response to 464 Earl Street and Their Attempt to Arrest Mr. Lee

1. L.V.’s 911 Call and Initial Contact with Responding Officers

At 5:52 p.m. on October 5, L.V. called 911 to report that Mr. Lee had tried to kill her and that she “is really scared.” L.V. told the emergency operator that Mr. Lee fired two shots at her with his revolver in her home at 464 Earl Street and that she had escaped from the house. She said her five children witnessed the entire incident and remained in the house. J.G. joined in the 911 call because L.V. ran in front of his car as he was driving home from work on Third Street telling him that she needed help. J.G. then drove L.V. about three blocks to his home so she could safely call 911 from his car.

L.V. told the operator that Mr. Lee said he “would just kill their children first and then kill me after that.” L.V. said that Mr. Lee had “not slept ...since yesterday. He’s been doing cocaine and drinking...ever since yesterday.” L.V. also told the operator that Mr. Lee is a 28 year old Hmong male, with slicked back hair and was wearing a white t-shirt. She also said that Mr. Lee was in possession of the revolver and that he normally kept it in his pocket. The 911 dispatcher provided this information to the numerous SPPD officers who responded to the scene.

At 5:55 p.m., Officer Ashley Leopold and her partner, Officer Nathan Smith, were the first officers to interact with L.V. Audio and video taken from the BWC worn by Officer Leopold shows L.V. telling the officers that Mr. Lee had been “doing cocaine” and that he shot at her twice in her home at 464 Earl Street. She also told the officers that Mr. Lee had threatened to kill her five children who remained in the home, and that he had a revolver.

2. Initial Police Actions Taken at 464 Earl Street

SPPD officers assumed various tactical positions outside of the 464 Earl Street house. Officer Dan Gleason and his partner Officer Andy Betsinger took positions outside the rear of the house near both the garage and an adjacent alleyway. Among the other officers posted in that area were SPPD K-9 Patrol Officer Collen Rooney with her canine partner "Gilly," and Officers Nick Grundei and Ashley Leopold. Officer Jordan Wild was among a group of three officers positioned outside on the sidewalk, in front of the house next door and to the south of 464 Earl Street.

Numerous loud and clear verbal commands given in English by an officer using a squad car public address system and directed towards the 364 Earl Street house ordering Mr. Lee by name and all others in the house to "come out with your hands up," can be heard on audio taken from BWCs worn by Officers Wild and Leopold. At approximately 6:03 p.m., an unidentified neighbor can be seen and heard informing Officer Wild that he saw Mr. Lee leave in a black SUV approximately 5 minutes earlier.

Video from Officer Wild's BWC shows the five children exiting from the front of the 364 Earl Street house at approximately 6:06 p.m. At 6:12 p.m., several additional loud and clear verbal commands given by officers in both English and Hmong ordering anyone in the house to "announce" themselves or a police canine would be sent into the house and "you will be bit" can be heard on the audio from Officer Wild's BWC. Video from his BWC shows an SPPD SWAT team entering the house at 6:13 p.m.

3. Mr. Lee is Spotted and Pursued by Officers

Officer Rooney said that while she and Officers Betsinger, Leopold, Grundei and Gleason were still covering the rear of the 364 Earl Street house, they heard noises coming from near the garage. Officer Betsinger said he heard "rustling behind the garage." Officer Leopold said she heard "shuffling" sounds coming from bushes near the garage. Officer Grundei said he heard something that sounded like a chain-link fence being shaken, to the south of his position. Officer Gleason said also he heard a sound like somebody going over the chain link fence. He then saw an Asian male in a white shirt walking east on the sidewalk, away from officers, at a fast pace. The officers put a team together, with Officer Rooney and her canine partner Gilly in the lead, to check the other side of the garage.

After Officer Wild informed SWAT Team operator Officer Smith that a neighbor told him that he saw Mr. Lee in a black SUV approximately five minutes earlier, he assumed a new position near the front of the 464 Earl Street house. Officer Wild said he then heard someone from behind the house say that a male matching the description of Mr. Lee "just jumped from a garage" in the back of the house and that he appeared to be heading south. Since Officer Wild was armed with a 12-gauge shotgun, he received permission to provide long gun cover to Officers Nou Thao and Tsue Yang who were posted on the southeast side of the sidewalk at the intersection of Earl and Euclid Streets.

Officers Thao and Yang heard a police radio broadcast report that a male matching the description of the suspect, had been seen walking behind the garage. Both officers were positioned near the intersection of Earl and Euclid Streets when they saw a male, wearing a white t-shirt, walking east on Euclid Street. As a group of officers that included Officers Wild, Rooney and Gleason that were ahead of Officers Thao and Yang, started to approach Mr. Lee, Officer Thao saw him skipping, not running, followed by the other approaching officers.

4. Mr. Lee is Shot by Officers

Officers Gleason and Rooney with her canine partner Gilly, continued their foot pursuit of Mr. Lee eastbound along the sidewalk of Euclid Street. Officer Wild quickly joined the two officers to provide additional cover for Officer Rooney and Gilly. He took a position to the left side of Officers Rooney and Gleason, with Officer Rooney and Gilly in the center. Officer Rooney estimated that Mr. Lee was approximately 200 yards away from her and walking away from the officers. The three officers said they all issued commands ordering Mr. Lee to stop. Officer Wild also said he gave verbal commands ordering Mr. Lee to stop, put his hands up and turn around.

After Mr. Lee stopped, Officer Wild told investigators that he saw him turn around facing the officers with his hands up. The three officers can be heard from audio taken from Officer Wild's BWC giving multiple verbal commands to Mr. Lee ordering him "to get on the ground." Officer Wild said Mr. Lee did not comply with the commands and saw him reach with his right hand to his waistband or pocket and pull out a firearm that he pointed at the three officers. Officers are also heard on audio taken from Officer Wild's BWC, ordering Mr. Lee to "show his hands" and "to drop it."

Officer Wild said he saw Mr. Lee slightly drop his arm with the gun and then raised it again, pointing it again at him and Officers Rooney and Gleason. Officer Wild then fired a round from his 12-gauge semi-automatic shotgun. He said he then heard Officer Gleason shoot and then saw a bright light coming from where Mr. Lee was standing and heard a sound of a loud crack. Officer Wild believed the flash and loud cracking sound was Mr. Lee shooting at the officers, prompting Officer Wild to fire the remaining five rounds from his shotgun.

J.B. who lives on Euclid Street, told investigators that he was walking in the alley near where Mr. Lee was shot, when he heard what sounded like "people not getting along." J.B. observed a uniformed police officer "yelling orders for a guy to drop it, comply, and get down." J.B. said the commands sounded "very official" and the "guy had time to comply. He chose not to." J.B. then heard gunfire.

D.T. told investigators that she was sitting in the backyard of her Euclid Street house near where Mr. Lee was shot, when she heard a female police officer shout words to the effect of "Don't come any closer... Drop what you have in your hands... Get down on the ground." D.T. said the officer "sounded like she was really threatened."

J.C. who lives on Euclid Street, told investigators that she was at her home at the time of the incident and heard voices yelling "Stop! Get on the ground!"

T.B. and K.B. live in the house in front of the location where Mr. Lee was shot. T.B. told investigator that he was inside the house when he heard both people yelling "stop" and then his dogs barking. He came outside and heard "big pops." K.B. told investigators that she was near her car in her driveway when she heard "five or six really loud pops." T.B. said he saw Mr. Lee "after he got shot."

G.L. told investigators that he was playing darts in the backyard of his neighbor's house on Euclid Street, near where Mr. Lee was shot, when he heard someone yelling something to the effect of "stop... get down." G.L. said he also saw a police officer with a rifle and other officers holding their handguns. He said he heard voices shout "get down" and "show me your hands" multiple times and as he moved closer to the front of his neighbor's house he "felt at least a dozen shots."

After seeing that Mr. Lee had fallen to the ground, Officer Wild and the other officers in the immediate area approached him. The officers continued to issue verbal commands to Mr. Lee ordering him not to move. Officer Wild saw a bright silver snub-nose style revolver lying on the street approximately three feet from Mr. Lee's body. Video taken from Officer Wild's BWC as he first approached the fallen Mr. Lee, shows a silver-plated revolver with a black handle lying approximately 18 inches from his right hand.

Officer Gleason said Mr. Lee initially did not comply with the commands given by the officers to stop. When Mr. Lee did stop, Officer Gleason said that he turned around to face the officers. Officer Gleason said that "we were giving him commands to show us his hands, get down on the ground, things of that nature." Officer Gleason said that instead of complying with those commands, he saw Mr. Lee's hand "shot" into his right pocket, then remove from his pocket a silver, snub-nose revolver. Officer Gleason said he saw Mr. Lee bring the gun up like he was going to fire at the officers. Officer Gleason said he believed Mr. Lee was a threat to his life and the lives of Officers Rooney and Wild. Officer Gleason heard what he believed to be gun fire from a shotgun coming from his left side before he fired "approximately 8-9 shots" from his AR-15 rifle, until Mr. Lee went down and was no longer a threat.

Officer Gleason moved up and covered the fallen Mr. Lee until other officers handcuffed him. Officer Gleason heard a hissing sound coming from car tires that had been hit by the shots, behind Mr. Lee. Officer Gleason went and cleared the vehicle that had been hit to ensure no one was inside. After finding the vehicle empty, Officer Gleason returned to the suspect and saw a handgun lying on the street.

Officer Rooney said that when she asked Mr. Lee to stop, he complied and then he turned toward the officers. Officer Rooney said that after he stopped, she initially saw Mr. Lee's hands. She repeatedly yelled at him to "let me see your hands." She said Mr. Lee started to put his hands up and then she "told him to get down on the ground." She then saw Mr. Lee's "hand reach into his right pocket and before I knew it, he pulled out a silver handgun and was aiming it right at all of us."

Officer Rooney took cover behind a boulevard tree and she released her canine partner Gilly towards Mr. Lee with "a bite command" because Mr. Lee was still standing approximately 100-150 yards away from her and Officers Gleason and Wild. At the same time, Officer Rooney said that "shots were fired from both sides of me." She could not say for certain whether Mr. Lee fired any shots. Because of her need to control Gilly, Officer Rooney did not remove or fire her weapon. After the shooting stopped, Officer Rooney saw Mr. Lee was on the ground and she and Officer Gleason approached him. She saw the silver handgun approximately three to four feet away from Mr. Lee's body.

Officers Thao and Yang said they heard the group of officers, including Officers Gleason and Wild, announce themselves as police officers and directed Mr. Lee to stop. Officers Thao and Yang both said they were running to catch up with the other officers, who were closer to Mr. Lee than they were. Officer Thao also heard officers tell Mr. Lee to take his hands out of his pockets. Officer Thao saw Mr. Lee turn, point a gun toward the officers, and then he saw a flash. Officer Thao believed that Mr. Lee fired at officers. Officer Thao immediately sought cover behind a tree, pulled his own gun, but did not shoot because other officers were in his line of fire. The other officers fired and Mr. Lee went down. Officer Thao was unsure how many shots fired. When the shooting stopped, Officer Thao approached the fallen Mr. Lee and saw a silver revolver in the street next to his body.

Officer Yang said he heard orders from multiple officers directing Mr. Lee to stop and to "keep your hands up." Officer Yang said he saw Mr. Lee stop, put his hands up, then reach for his pocket. Officer Yang then saw Mr. Lee remove a silver gun from his pocket and raise it in a "motion of pointing the gun at" the officers. Officer Yang sought cover behind the same tree as Officer Thao. Like Officer Thao, Officer Yang pointed his gun towards Mr. Lee but did not fire because other officers were in his line of fire. Officer Yang heard gunshots but could not tell who fired them.

Officer Yang estimated that he and Officer Thao were approximately 20-30 yards behind and to the west of the group of officers including Officers Gleason and Wild, and no more than two house lots west from where Mr. Lee was standing when he was shot.

C. Other Relevant Evidence

1. Video Evidence Taken from Private Security System

BCA investigators received video from a security system at a private residence on Euclid Street that captures the shooting of Mr. Lee. Investigators analyzed the video, which does not have audio. They found that the time stamp on the video was twenty-two minutes ahead of actual time.

The video shows Mr. Lee, first walking, then jogging on the sidewalk, east on Euclid Street. He is seen looking back over his right shoulder and then begins walking east on the sidewalk again. Approximately 20 seconds later, Officer Rooney and her canine partner Gilly is initially seen running in pursuit of Mr. Lee. She is closely followed by Officers Wild and Gleason, both with their long guns pointed at Mr. Lee. Officers Thao and Yang are then seen with their handguns drawn, running a few feet behind Officers Rooney, Wild and Gleason. The officers are pursuing Mr. Lee by running on the sidewalk.

The video shows Mr. Lee stop, then turn and face the pursuing officers. He appears to raise both arms and then begins to walk towards the officers before stopping and quickly reaching into his pocket with his right hand. Some of the officers attempt to seek cover behind a tree while other officers remain on the sidewalk. Mr. Lee removes an object, which cannot be clearly identified on the video, from his right pocket, then points his arm and the object at officers. The video clearly shows a flash emanate from the object in Lee's right hand, immediately before he falls down on the street.

Officer Rooney is seen releasing police canine Gilly who runs up and places a bite hold on Mr. Lee's leg. The officers then slowly and cautiously advance towards the fallen Mr. Lee with their guns drawn. The video then shows officers placing handcuffs on Mr. Lee and Gilly being removed from his bite hold on Mr. Lee's lower left leg.

2. Medical Intervention and Autopsy of Mr. Lee

Paramedics from the Saint Paul Fire Department ("SPFD") arrived to provide medical assistance to Mr. Lee within approximately one minute after he had been shot. According to a SPFD report, there was no movement or breathing from Mr. Lee and he was pronounced dead by a paramedic on the scene, and his body was transferred to the Ramsey County Medical Examiner's Office.

Assistant Ramsey County Medical Examiner Dr. Butch Huston performed the autopsy on the body of Mr. Lee. Dr. Huston determined that Mr. Lee died as a result of multiple gunshot wounds.

Toxicology testing showed that Mr. Lee's blood alcohol was .18 grams per deciliter and his urine contained cocaine and cocaine metabolites.

3. Mr. Lee's Firearm

The silver-plated, black handled, firearm found on the street next to the body of Mr. Lee was identified as a Taurus .38 caliber, five-shot revolver. The firearm had originally been purchased in Milwaukee in 1996. When recovered, the firearm had three spent shell casings and two live rounds in its cylinder. This is consistent with the physical evidence, video, and witness descriptions that two shots had been fired by Mr. Lee in the residence prior to police being called, and one shot fired by Mr. Lee at police.

Mr. Lee was convicted of felony Domestic Assault in Ramsey County in 2013. Because of that conviction, Mr. Lee was ineligible to possess firearms for life. In July 2017, Mr. Lee was charged with Possession of a Firearm by an Ineligible Person in Hennepin County. That charge was pending at the time of Mr. Lee's death.

4. Training History and Toxicology Testing of Officers Wild and Gleason

Officer Wild has been a licensed peace officer for approximately three years. Among the many training classes he has taken since he began employment with the SPPD in 2008, include classes in use of force in 2016 and 2015. Officer Gleason has been a licensed peace officer for approximately ten years. Among the many training classes he has taken since he began employment with the SPPD, include classes in use of force in 2016, 2015 and 2013.

Shortly after the shooting, both Officers Wild and Gleason each voluntarily submitted to toxicology tests conducted on October 5th, which showed that neither officer was under the influence of alcohol or controlled substances at the time of the shooting.

5. Additional Relevant Evidence Found by the BCA at 464 Earl Street and the Scene of the Shooting

BCA investigators executed a search warrant at the 464 Earl Street residence. Inside, they found documents suggesting that Mr. Lee actually lived at the 464 Earl Street house. In the basement, they found 16 bags and two large jars of marijuana. Investigators also found white powder in the basement and in the kitchen, later determined to be methamphetamine. Near the drugs in the basement, investigators found a black nylon holster and a Glock-brand .40 caliber ammunition magazine.

Investigators found two bullet holes in the walls in the living room of the 464 Earl Street house, above and near a sofa, which are consistent with L.V.'s statement that Mr. Lee fired two shots over her head and the heads of her children. Investigators also found a spent bullet in the foyer of the house.

Ten .223 caliber spent shell casings were recovered from the scene of the shooting of Mr. Lee on Euclid Street, consistent with having been fired by Officer Gleason's AR-15 rifle. Six 12-gauge spent shotgun casings were also recovered from the scene, consistent with having been fired by Officer Wild's Remington 12-gauge shotgun.

6. Injury Sustained by Police Canine Gilly

Officer Rooney brought her canine partner, Gilly, to the University of Minnesota Veterinary Medical Center after the shooting and after finding that Gilly was bleeding. Gilly, a five-year-old Belgian Malinois, was treated for an injury to his right paw. The broken portion of Gilly's claw from his paw was removed. The treating veterinarians could not say if Gilly's paw had been somehow torn or shot.

III. Legal Analysis and Recommendation

A. Applicable Law

Minnesota Statutes, Section 609.066, subdivision 2(1)-(3) provides that the use of deadly force by a peace officer is justified only when necessary in certain situations, including the following:

- (1) To protect the peace officer or another from apparent death or great bodily harm;
- (2) To effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or
- (3) To effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed."

In order to bring charges against a peace officer for using deadly force in the line of duty, a Minnesota prosecutor must be able to prove beyond a reasonable doubt that the use of force was not justified.¹

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

¹ RCO charging policies provide that charges should only be filed in any criminal case "when credible admissible evidence creates a reasonable probability of obtaining a conviction at trial. This is similar to the National District Attorneys Association Charging Standard 4-2.2 ("a prosecutor should file charges that...[the prosecutor] reasonably believes can be sustained by admissible evidence at trial") and the US Attorney Manual § 9-27.220 (a federal prosecution should be commenced only when "the admissible evidence will probably be sufficient to sustain a conviction").

In Graham, the Court outlined a non-exhaustive list of factors for balancing an individual's rights versus an officer's rights. Among the factors identified by the Court include: 1) the severity of the crime at issue; 2) whether the suspect poses an immediate threat to the safety of the officers or others; and 3) whether he is actively resisting arrest or attempting to evade arrest by flight. The Court also made clear that whether an officer used reasonable force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." The Court held that allowance must be made for the fact the law enforcement officers are often required to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.

When taken together, Minn. Stat. § 609.066 and the above-referenced constitutional standard, establish that if the officer's use of deadly force was objectively reasonable in the face of the danger of death or great bodily harm, no criminal charges can be brought against the officer.

B. Recommendation – The Use of Deadly Force Against Mr. Lee Was Justified Under Minnesota Law

After carefully considering the evidence presented in this case and the objective legal standard recognized by the U.S. Supreme Court and Minnesota law, we believe for the following reasons that the use of deadly force by Officers Wild and Gleason against Mr. Lee was objectively reasonable, necessary and therefore justified under each of the three of the situations set forth in Minnesota Statutes, Section 609.066 subdivision 2(1)-(3).

1. Minnesota Statutes, Section 609.066, Subdivision 2(1)

Officers Wild and Gleason responded to a 911 call they knew involved a male identified as Mr. Lee, who was reported by his girlfriend, L.V., to have threatened to kill her and their shared five children. They also knew that Mr. Lee had held L.V. and their five children hostage at gunpoint while he fired two shots in L.V.'s living room. They further knew that Mr. Lee was in a possession of the firearm he fired in L.V.'s house and that he was seen running east on Euclid Street.

Approximately nine seconds after Officers Wild and Gleason and other officers loudly and clearly ordered Mr. Lee multiple times to stop, drop his gun and show his hands, the two officers fired sixteen shots at Mr. Lee, killing him. During that period of time, the officers told BCA investigators they heard and observed the following information:

- In their pursuit of Mr. Lee, both officers said that he stopped and began walking towards the officers before he quickly reached into his right pants pocket and removed a firearm in his right hand and that he was pointing it at them and their fellow officers.
- Officer Wild said he observed Mr. Lee initially drop his right hand slightly, but then raise it again at which time he made the decision to shoot one round from his 12-gauge shotgun at Mr. Lee. Officer Wild then saw a bright light coming from Mr. Lee and he also heard "a loud crack" sound which he believed was Mr. Lee

firing his gun at the officers. This led to Officer Wild shooting five more rounds at Mr. Lee.

- Officer Gleason also saw Mr. Lee raising his gun in a way that he believed posed a deadly threat to him and his fellow officers. Officer Gleason heard a shotgun round fired from his left side and he stepped to his right away from a tree and fired ten rounds with his AR-15 rifle at Mr. Lee.

None of the foregoing observations by the officers were contradicted by any known witness or other evidence. To the contrary, statements from witnesses and physical evidence corroborate the violent and threatening behavior engaged in by Mr. Lee in the 464 Earl Street home that resulted in the 911 call made by L.V. Many witnesses and audio from Officer Wild's BWC also corroborate the multiple verbal commands given by officers ordering Mr. Lee to drop his gun and show his hands to officers. During the entire nine second confrontation with Mr. Lee, there is video taken from a neighbor's private security camera showing some of the officers were only slightly protected from Mr. Lee's gunfire by a boulevard tree, while other officers were unprotected on the sidewalk.

Finally, that same video shows Mr. Lee reaching into his right front pocket of his pants, removing an object and pointing it at the police with a resultant flash coming from the object. The video taken from Officer Wild's BWC immediately after the shooting shows the .38 caliber revolver lying near Mr. Lee's hand. BCA investigation of the five round capacity, .38 caliber revolver, further showed three spent bullet casings in the gun's cylinder. These facts when viewed together, lead to the irrefutable conclusion that the object in Mr. Lee's right hand was the .38 caliber revolver and that he fired one bullet at the police and the other two bullets in the living room of 464 Earl Street where he held L.V. and their five children hostage at gunpoint.

For all of the foregoing reasons, it is our opinion that the beliefs expressed by Officers Wild and Gleason that Mr. Lee posed a threat to their lives and those of their nearby fellow officers, are reasonable under the facts and circumstances as presented to this office. Accordingly, it is our opinion that the officers' use of deadly force in this matter was necessary and thus justified under Minn. Stat. 609.066, subd. 2(1).

2. Minnesota Statutes, Section 609.066, Subdivision 2(2) and (3)

As previously noted, L.V. told the 911 operator that Mr. Lee had held her and their children hostage at gunpoint, had threatened to kill her and their five children, had fired two shots in her home and that he remained in possession of the gun used to fire those shots. The use and discharge of a firearm under those circumstances are felony crimes involving the use of deadly force. This information was known to Officers Wild and Gleason before they identified the fleeing armed male as Mr. Lee, and they began their foot pursuit of him.

Based on these facts combined with the officers own observations of Mr. Lee's actions as they pursued him, it is our opinion that it is reasonable to consider their use of deadly force as justified to effect the arrest of a person they know or have reasonable grounds

to believe has committed a felony involving the use of deadly force. For this same reason, it was also reasonable for the officers to believe that Mr. Lee constituted a danger to the lives of persons he could have encountered as he fled from the police.

For these reasons, it is also our opinion that the use of deadly force by Officers Wild and Gleason in this matter was also necessary and thus justified under Minn. Stat. 609.066, subd. 2(2) and (3).

Gerhardstein, Dennis

From: Choi, John
Sent: Wednesday, August 08, 2018 10:18 AM
To: Kelly, John; Dusterhoft, Richard
Cc: Gerhardstein, Dennis
Subject: In re death of Phumee Lee - OIS

John and Rick,

Thank you both for the work you put into reviewing the evidence that was presented to us by the BCA in the investigation into the officer-involved shooting incident that resulted in the death of Phumee Lee. I have finished reviewing your memorandum that summarizes the BCA's investigation and the video evidence that was presented to us.

While the loss of life is tragic, I agree with your recommendation that the use of deadly force by Saint Paul Police Officers Wild and Gleason was justified pursuant to law and no criminal charges are appropriate.

There is no question that responding officers, including Wild and Gleason, were aware they were responding to a dangerous situation involving a suspect who had just held a woman and children at gunpoint, threatening to kill them, and that he had fired his weapon inside the home and was likely armed. In this type of situation, officers are expected and trained to find and apprehend the suspect.

Within a very short period of time and not too far from the home where shots were fired, St. Paul officers encountered Mr. Lee. Video from a resident's private security camera shows a group of officers, including Wild and Gleason, pursuing Mr. Lee down the sidewalk (of Euclid Street). On the audio recording from Officer Wild's body-worn camera, the officers can be heard repeatedly ordering Mr. Lee to stop. The video shows Mr. Lee finally stop, turn, walk towards and face the officers, slightly raising his arms and then begin to walk towards them. He then is seen quickly reaching into his right front pants pocket and removing an object with his right hand. Some of the officers can be seen attempting to seek cover behind a tree while other officers remain unprotected on the sidewalk. Mr. Lee, with his right hand, then points the object at the officers. Officers can be heard on the audio recording yelling at Mr. Lee to "drop it" and "show us your hands."

The video clearly shows a flash emanate from the object in Mr. Lee's right hand immediately before he falls onto the street. Simultaneously, or a split second before or after, Officer Wild fired six rounds at Mr. Lee from his weapon and Officer Gleason fired ten rounds from his. Officers recovered a .38-caliber handgun 18 inches from Mr. Lee's right hand on the ground.

Please work with the BCA to coordinate the public release of the investigative file, with appropriate redactions, contemporaneous with the public release of this decision. Please also inform the attorney and family of Mr. Lee, Chief Todd Axtell and the officers involved in this shooting incident of our decision before it is released to the public. Please let Mr. Lee's family know I am willing to meet with them to further explain our decision if they wish to do so.

Thank you both for your thorough review of this investigation. Please also express my gratitude to the BCA agents who worked on this case.

