



# OFFICE OF PINE COUNTY ATTORNEY Reese Frederickson

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## MEMORANDUM

**DATE:** February 5, 2021

**SUBJECT:** In the Matter of the Death of Anthony Michael Legato

**BY:** Reese Frederickson, Pine County Attorney

### I. Introduction

The Pine County Attorney's Office has reviewed the investigation submitted by the BCA in the officer-involved shooting involving Anthony Michael Legato that happened on October 9, 2020. It is our conclusion that Deputy Josh Pepin's use of deadly force in the line of duty was necessary to protect himself or others from apparent death or great bodily harm as is permitted by Minnesota Statutes section 609.066 subdivision 2(1) and (2). Given our conclusion, we will neither issue a criminal complaint nor present this case before a grand jury.

### II. Facts

The following facts are taken from the BCA's investigation of the matter. The investigation was an independent gathering of facts; at no time did the BCA or its Agents put forth a legal opinion or conclusion.

On Wednesday, October 7, 2020, Anthony Michael Legato, DOB: 6/26/1995 ("Decedent") checked into room 543 of the Grand Casino Hotel in Hinckley under the name of "Steven Letexier" using Letexier's driver's license. He subsequently used Letexier's player's card in the casino. Later investigation revealed that Letexier is the brother of Decedent's girlfriend "CT". Decedent obtained Letexier's driver's license because Decedent was trying to avoid an arrest under his active warrants (Decedent and Letexier had similar physical

characteristics). Decedent had four active warrants for his arrest.<sup>1</sup> He also had three other pending felony criminal cases not in warrant status.<sup>2</sup>

Decedent's girlfriend CT joined him at the hotel. There was an active Domestic Abuse No Contact Order (DANCO) prohibiting Decedent from having contact with CT due to an open felony case where CT was the alleged victim.<sup>3</sup> A violation of a DANCO is a mandatory arrest.<sup>4</sup> Decedent had a pending DANCO violation from June 2, 2020 where he was arrested in Anoka after having contact with CT.<sup>5</sup> He was also arrested on September 2, 2019 for violating a DANCO in Ramsey County involving CT; he later pled guilty to that offense.<sup>6</sup>

Decedent was also in possession of two handguns: a .45 caliber Smith & Wesson, and a Ruger SR40 pistol. Decedent has five prior felony convictions in Minnesota and Illinois prohibiting him from possessing firearms.<sup>7</sup> One of those convictions was for 1<sup>st</sup> degree burglary, which is a crime of violence under Minnesota's firearms law.<sup>8</sup> A person with a conviction for a crime of violence who possesses a firearm is subject to a mandatory minimum prison sentence of 60 months.<sup>9</sup>

The .45 was confirmed stolen from a vehicle in Anoka County three weeks prior to this incident. Possession of a stolen firearm is also subject to felony penalties.<sup>10</sup>

Decedent was also in possession of methamphetamine, a felony offense.<sup>11</sup> Further, Decedent was on felony probation with Washington County with numerous conditions, including remaining law abiding and complying with all DANCO and no contact orders.

On October 9, 2020, Decedent and CT were in Room 543. According to CT, Decedent became angry with her because she turned up the heat in the room, and the two of them argued,

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<sup>1</sup> Decedent had warrants in the following cases: Anoka County file 02-CR-20-3417 (gross misdemeanor domestic abuse no contact order violation; gross misdemeanor giving a false name to a police officer; misdemeanor fleeing police on foot); McLeod County file 43-CR-19-1370 (felony terroristic threats and felony domestic assault by strangulation); Washington County file 82-CR-18-2686 (felony 1<sup>st</sup> degree burglary); and Washington County file 82-CR-19-5209 (misdemeanor receiving stolen property).

<sup>2</sup> In addition to cases listed footnote 1, Decedent had the following pending cases: Washington County file 82-CR-20-2116 (felony theft by swindle and felony identity theft); Ramsey County file 62-CR-20-967 (felony possession of firearm/ammunition after conviction for a crime of violence and felony fleeing police in a motor vehicle); and Dakota County file 19HA-CR-19-2859 (felony receiving stolen property). The Ramsey County case is somewhat similar to this matter. On October 27, 2019, Decedent was involved in a motor vehicle pursuit with law enforcement. During that pursuit, Decedent fled southbound in the northbound lanes of Cleveland Avenue in Roseville. Officers eventually caught up with Decedent when he fled into a hotel. Officers located a .40 caliber pistol with a loaded magazine near the scene that contained Decedent's DNA. A female with Decedent told law enforcement that he fled to avoid his arrest warrants.

<sup>3</sup> 43-CR-19-1370.

<sup>4</sup> MINN. STAT. § 629.75 subd. 3.

<sup>5</sup> 02-CR-20-3417.

<sup>6</sup> 62-CR-19-6560.

<sup>7</sup> Two for receiving stolen property, one for financial transaction card fraud, one for 1<sup>st</sup> degree burglary, and one for theft by swindle.

<sup>8</sup> MINN. STAT. § 624.712 subd. 5.

<sup>9</sup> MINN. STAT. § 624.713 subd. 1(2) and 2(b); MINN. STAT. § 609.11 subd. 5(b).

<sup>10</sup> MINN. STAT. § 609.53 subd. 1; MINN. STAT. § 609.52 subd. 3(1).

<sup>11</sup> MINN. STAT. CHAP. 152; see also mandatory minimum sentencings in felony drug cases involving possession of a firearm (MINN. STAT. § 609.11 subd. 5(a)).

calling each other names. During the argument, Decedent came at CT and hit her in the leg, causing her to drop to the floor in pain. CT stated that Decedent spit on her and pressed the .45 pistol against her cheek. She stated that she was frightened of Decedent because of past abuses.<sup>12</sup>

At some point, Decedent ripped the phone from the wall so CT could not call security. CT stated she began screaming and opened the door to the room to attract attention. She explained that as she was screaming, Decedent was gathering his stuff and begging her to stop because “he knows he’s gonna be in trouble.” Decedent exited the room upon gathering his items.

At 1:41 p.m., a Grand Casino employee was in the 5<sup>th</sup> floor closet when he heard CT screaming at the other end of the hallway. He stepped out of the closet and saw Decedent hurrying down the hall, pulling a silver suitcase and wearing a grey backpack. When Decedent saw the employee, he said, “I don’t know what’s wrong with that lady, she was screaming at me; you should call security or something.” Security also received a call from housekeeping at that time informing them of the domestic situation.

Decedent then got into an elevator and went down to the hotel lobby, exiting the elevator at 1:42 p.m. and proceeding to the parking lot.

Also, at 1:42 p.m., CT used the phone in the hotel room’s bathroom to call security. Security described her as hysterical. CT informed security that her boyfriend had assaulted her. She stated that he had firearms, a large bag of methamphetamine and was headed out of the casino.

At 1:44 p.m., Decedent got into his vehicle in the parking lot. The vehicle was a tan 2001 Ford Expedition with license plate 571RJV, registered to MPL. The 2001 Expedition is a large, four-door SUV weighing 4,891 pounds; it is over 17 feet long, 6.5 feet wide and over 6 feet in height. Hooked to the back of the Expedition was an aluminum 4x8 silver trailer with a four-foot ramp that was in the upright position. The trailer was stolen from Ramsey County on August 15, 2020. It added to the weight and length of the vehicle. The trailer contained a red 2004 Honda “crotch rocket” motorcycle registered to NN, which was secured upright in the middle of the trailer with red/orange ratchet straps. Decedent left the main entrance of the hotel in the Expedition and drove<sup>13</sup> south on Hinckley Road (County Road 15).

Meanwhile, casino security went to Room 543. CT opened the door and asked, “Did you get him?” CT told security about the assault and having the gun pointed at her. She stated that Decedent was violent and had a big bag of methamphetamine in his backpack.

At approximately 1:46 p.m., security spoke with Pine County Dispatch while continuing to speak with CT. Security told Dispatch that the suspect left Grand Casino Hinckley in a tan Ford Expedition with a trailer and crotch rocket. Security provided Dispatch with the license plate number. Security told Dispatch that the suspect had a gun, a “big bag of meth” and the

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<sup>12</sup> The past abuses she mentioned included threatening her with firearms (including putting a gun in her “private parts” and her mouth), pistol whipping her, breaking her arm and strangling her.

<sup>13</sup> Decedent’s driver’s license status had been revoked in April of 2020.

incident was a domestic. As security was speaking with Dispatch, another security employee was relaying information as they were obtaining it from CT. At this point, security learned that Decedent would use his weapon against law enforcement if encountered and informed Dispatch of this information. Security also stated that Decedent went south on County Road 15.

At 1:48 p.m., Dispatch sent out the following call to deputies over radio: "Pine County 92 a disturbance. They have left the casino. Male and female had supposedly had a domestic in the room. Unknown name. Male left in a tan Ford Explorer with a trailer. 571 Robert John Victor. Female called security said that the male left with a bag of meth and a gun in the vehicle. She said that if law enforcement is involved, he will use the gun. He went south on 15, unknown [unintelligible] Little Lena. Female still at the casino; they're getting her info." After the radio call was acknowledged, the dispatcher returned and stated that the vehicle was an Expedition, not an Explorer; she also stated the name of the registered owner of the Expedition and that owner had a suspended license.

At approximately 1:50 p.m., Sgt. Derrek Naumann of the Mille Lacs Band Police Department responded to the Dispatch call as he was at his office near the casino. He drove south on County Road 15 until Beroun Crossing Road, but did not encounter the Expedition. He radioed back at 1:55.

At 1:52 p.m., Chief Deputy Paul Widenstrom of the Pine County Sheriff's Office responded that he would be in the Beroun area and would watch for the Expedition. Chief Deputy Widenstrom was driving an unmarked, light gray 2010 Chevrolet Tahoe. His Tahoe was not a squad-rated vehicle; it was an off-the-lot vehicle obtained from a forfeiture and had a salvage title. It had over 100,000 miles and a basic light package (a dash light, two grille lights, and two back window lights). It did not have a light bar or a siren, or any other law enforcement enhancements. His Tahoe's top speed was under 90 mph.

Deputy Joshua Pepin was also in the area and first checked the Marathon Gas Station on Beroun Crossing Road near I35. After clearing the station, Deputy Pepin saw Chief Widenstrom making a U-turn and stop at the intersection of Beroun Crossing Road and County Highway 61, just east of the station. Deputy Pepin pulled up next to Chief Deputy Widenstrom. Chief Deputy Widenstrom stated that he would drive north on County Highway 61. Deputy Pepin stated he would continue east on Beroun Crossing Road. Deputy Pepin was driving a fully marked 2020 Ford Explorer squad.

At 1:59 p.m., Chief Deputy Widenstrom radioed Dispatch and stated he was northbound on County Highway 61 near Rice Road (about a mile north of the City of Beroun) and the Expedition passed him going southbound (County Highway 61 is a two-lane road – one southbound lane and one northbound lane). Chief Deputy Widenstrom pulled over, allowed a car to pass and then made a U-turn and headed south; he did not turn on the Tahoe's law enforcement lights. Deputy Pepin also notified Dispatch he was at Beroun Crossing and Cross Lake Road (about two miles east of Beroun). Deputy Pepin made a U-turn and headed west toward County Highway 61.

Chief Deputy Widenstrom radioed and said he was southbound about a mile behind the Expedition, which had reached Hopkins Sand & Gravel (located in Beroun at 24865 County Highway 61, on the west side of the highway).

At 1:59 p.m., the casino also called dispatch and stated that the male's name was Steven Letexier (based on the hotel registration) and provided a driver's license number.

At 2:00 p.m., Chief Deputy Widenstrom radioed dispatch and stated the Expedition drove onto the southbound shoulder and kicked up a lot of dust, and then entered a residential driveway south of Hopkins Sand & Gravel to make a U-turn. The Expedition then drove across a yard and got back onto County Highway 61, headed northbound. Chief Deputy Widenstrom turned on the Tahoe's law enforcement lights, proceeded northbound on Highway 61 and told Dispatch, "He's running from me, northbound. He figured out who I was." Chief Deputy Widenstrom guessed that Decedent saw the law enforcement lights in the Tahoe's grille when they passed each other earlier and observed Chief Deputy Widenstrom make a U-turn. Fifteen seconds later, Chief Widenstrom told Dispatch that the driver of the Expedition opened the door and threw something out, and that the driver was "in oncoming traffic, heading into cars." Deputy Widenstrom's Tahoe was not pursuit rated, so he tried to maintain a visual on the Expedition as he drove north. Chief Widenstrom radioed that he saw Deputy Pepin coming up behind him. Chief Widenstrom stated that he was in the northbound lane and again stated the Expedition was driving northbound in the southbound lane and heading into oncoming traffic.

Deputy Pepin radioed that he was going to pass Chief Deputy Widenstrom and take the lead in the pursuit. Chief Deputy Widenstrom pulled over to the shoulder to let Deputy Pepin pass. Deputy Pepin took the lead because he was in a pursuit-rated squad car with numerous lights (including a light bar) and sirens. Because Decedent was driving in the oncoming lane, the sirens and lights of a marked squad car were needed to warn drivers, and the squad was better equipped to pursue the Expedition which was driving at speeds of 85 to 90 mph (County Highway 61 has a 55 mph speed limit). Chief Deputy Widenstrom's Tahoe also did not have a squad camera, and per sheriff's office policy, the lead squad in a pursuit should be the vehicle with a squad camera.

The pursuit was captured on Deputy Pepin's squad camera. Decedent remained in the southbound lane, driving into oncoming traffic at 85 to 90 mph. A blue Ford Expedition with a trailer that was driving southbound had to immediately drive onto the shoulder to avoid a collision; Decedent stayed in the southbound lane and did not move as the blue Ford approached. The next vehicle forced off the road by Decedent was a southbound Honda SUV. When the Honda steered onto the shoulder, Decedent jerked the Expedition to the left and swerved toward the Honda, touched the fog line, then jerked the Expedition back into the southbound lane once he passed the Honda, and continued northbound.

A short distance past the Honda was a small Ford SUV pulled over on the right shoulder of northbound Highway 61. Decedent crossed the fog line to the left, and then headed right at a diagonal toward the small Ford SUV. He crossed into the northbound lane of traffic until his passenger side wheels touched the fog line as he passed near the Ford SUV. At many times during the pursuit, the trailer seemed unstable as it shook back and forth.

As Decedent approached the first curve south of the Hinckley Transfer Station, he drove into the oncoming lane to take the curve, then drove back into the northbound lane and partially on the shoulder. He straddled the fog line until he reached the next curve. After taking that curve, he straddled the center yellow line until reaching the Hinckley Transfer Station where he crossed the double yellow line into the oncoming lane and passed a northbound pickup truck with a trailer. He then crossed back into the northbound lane.

At 2:03 p.m., Decedent called 911, his voice was high-pitched, he was shouting and agitated (consistent with methamphetamine use). Much of the recording was incomprehensible due to Decedent's state. However, he stated that his "car won't stop and the police are right behind me" and "my car is fucked up and I am not responsible for this." He yelled that he "needed help." He then claimed to be a passenger in the vehicle and that his name was Steve. The Dispatcher asked him multiple times for the driver's name and he refused to answer.

At 2:04 p.m., Decedent approached the sharp curve before the I35 bridge, he drove into the oncoming lane of traffic and partially onto the left shoulder to make the curve. Once he made the curve, he drove back into the right lane just before the bridge. He then hit his brakes<sup>14</sup> and turned sharply left onto the freeway exit ramp, entering the freeway from the wrong direction (driving southbound into the northbound side of the freeway). A "one way" sign and a "wrong direction" sign were clearly visible before he turned in. Signs on the right were also visible stating that the entrance to South I35 was across the bridge and North I35 was to the right. The bridge and entrances/exits to the freeway are the standard type used throughout Minnesota. A car driving east on the bridge had to abruptly stop to avoid hitting Decedent. Chief Deputy Widenstrom radioed to law enforcement to terminate pursuit "unless [State Patrol] is in the area and can stop him" because Decedent entered the freeway into oncoming traffic. Chief Deputy Widenstrom stopped the Tahoe on the bridge to watch Decedent's vehicle as it proceeded southbound in the northbound lane. The pursuit between Hopkins Sand & Gravel in Beroun and the point when Decedent turned into I35 was 4.6 miles. At no time during those 4.6 miles did Decedent stop.

The weather that day was unseasonably warm at 75 degrees. The sky was clear and sunny. The northbound traffic on I35 was heavy because many people were traveling north from the Twin Cities to view the fall colors on Minnesota's North Shore. Friday traffic starts early as many people leave work early, have Friday's off, or were not at work because of COVID restrictions. The average speed of northbound vehicles on I35 is between 70 and 80 mph.

When the decision to terminate was broadcast by Chief Deputy Widenstrom, none of the officers followed Decedent onto the exit ramp and freeway. Deputy Pepin slowed his squad down and crossed the bridge. He then took a left onto the southbound entrance ramp with the intent to drive parallel to Decedent with his lights and sirens on to warn northbound traffic that something was going on. As Deputy Pepin headed south on the ramp, Decedent's vehicle was captured on the squad's camera as Decedent entered I35. Upon entry in the wrong direction, Decedent cut in front of an oncoming car and headed into the inner lane (i.e. the fast lane). Two northbound vehicles passed him in the outer lane. Decedent was then heading toward two oncoming northbound vehicles that were alongside each other. Decedent immediately turned to

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<sup>14</sup> Decedent was on the phone with Dispatch as mentioned in the previous paragraph, claiming that he his "car won't stop" while he was able to brake and turn left.

the left, cutting in front of the two northbound vehicles and driving the Expedition on the outer shoulder. Five more northbound vehicles passed him while he is driving on the shoulder. He then stopped the Expedition about a half mile south of where he entered the freeway. Twelve more cars passed him when he stopped on the shoulder.

Decedent then exited the Expedition, leaving the driver's door open. At approximately 2:05 p.m., Chief Deputy Widenstrom radioed that Decedent was in the ditch and "bailing on foot." Decedent then went to the trailer, put down the trailer ramp and unhooked the straps holding the crotch rocket.<sup>15</sup> He was also wearing the grey backpack. It appeared Decedent was attempting to remove the crotch rocket to continue to flee.

Deputy Pepin noticed that Decedent stopped. Deputy Pepin traveled to a turnaround that was 7/10ths of a mile south of the bridge. He took the turnaround and headed north on I35 in the northbound lane. There was no other turnaround between the bridge and the turnaround used by Deputy Pepin because a continuous metal cable barrier consisting of upright metal posts and four metal cables next to and running parallel to the fast lane of the northbound side of I35 prevented anyone from using the ditch to turnaround.

As Deputy Pepin was making the U-turn, his squad camera captured additional cars heading north in both lanes. He stayed ahead of those cars and saw that Decedent was parked on the right shoulder with the Expedition facing south. Deputy Pepin saw the driver's door was open but did not immediately see Decedent and thought he may have run into the woods on the east side. As Deputy Pepin got closer to the Expedition, he kept most of his squad in the right shoulder of the freeway, with the front driver's side wheels touching the fog line and the rear driver's side wheels over the fog line into the northbound lane to warn approaching drivers. Deputy Pepin stopped a couple of car lengths in front of the Expedition.

Deputy Pepin approached with his squad lights and sirens on. As Deputy Pepin was stopping, Decedent hurried from the trailer to the front door of the Expedition and got back behind the wheel.<sup>16</sup> He left the ramp of the trailer down, and the crotch rocket was still inside the trailer, but leaning against the left side. Deputy Pepin simultaneously stopped his squad, opened the driver's door and unholstered his service weapon, a 9 mm Glock 17 Gen4. He then got out of the squad, stood behind the driver's door, pointed his weapon with both hands at the Expedition through the space between the open door and the door jamb, and yelled at the Expedition. Deputy Pepin was directly in line of Decedent's sight. Decedent ignored Deputy Pepin, accelerated, and pulled out into oncoming traffic. When the Expedition's front tires crossed the fog line, Deputy Pepin fired the first shot at the Expedition. The bullet perforated the driver's side of the hood traveling approximately level to the ground before impacting the wires behind the engine underneath the hood. Decedent did not stop.

Deputy Pepin fired a second shot as the Expedition neared the front of his squad and was now fully in the northbound lane, driving south. The second bullet perforated the front side

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<sup>15</sup> About 30 seconds after stating Decedent was "bailing on foot," Chief Deputy Widenstrom radioed that Decedent was unhooking the crotch rocket and trying to get it started.

<sup>16</sup> The following recitation of the shooting is taken from a review of Deputy Pepin's squad and body camera footage, and the forensic analysis by the BCA's Crime Scene Team.

quarter panel near the hood traveling approximately level to the ground before impacting other metal parts underneath the hood. Decedent did not stop.

As the Expedition continued south, it started to head into the left lane directly at a line of cars that were heading north (the cars were in the left lane because they were moving over for Deputy Pepin's squad). Deputy Pepin fired a third shot. The bullet perforated the front driver's side door near the sideview mirror, traveling at a slightly upward angle (the bullet was later recovered from the front side driver's door). Decedent did not stop.

The Expedition was now parallel to Deputy Pepin's squad and heading directly into oncoming traffic in the fast lane. Deputy Pepin fired a fourth shot and the driver's side window of the Expedition shattered. The bullet perforated the rear of the driver's side door and traveled approximately level to the ground. As the Expedition continued past his squad it was now in the left lane. A northbound car had pulled onto the left shoulder next to the metal cable barrier. The four shots occurred within a span of two seconds. The Expedition narrowly missed the car in the left lane.

Deputy Pepin later described what happened in a statement to BCA Agents:

The cars behind me had stopped, there was a car in the fast lane that had stopped and at that time he got back in his car and then I didn't know he was going to go get the gun that possibly with him or what he was going to do. But he ended up getting back in, close the door, and then took off in my direction and then that's when I opened fire on his vehicle. I drew my, I had already had my gun out and then that's when I started shooting cause I felt that with the vehicle parked in the fast last I was standing in the slow lane. My squad car is right on the fog line. He was I felt in fear of my safety that he was either gonna take me out or the lady that was parked in the fast lane.

After the fourth shot, the Expedition began to slow down and headed toward a Subaru that had pulled onto the left shoulder. The trailer's ramp was dragging on the pavement. Deputy Pepin holstered his weapon. The Expedition crossed onto the left shoulder toward the parked Subaru. When it was a few feet away from hitting the Subaru and while it was still moving, the driver's door of the Expedition opened and Decedent got out, took one or two steps, and fell face forward onto the pavement in the left lane. The Expedition continued forward and crashed into the left front of the Subaru, coming to rest as it became sandwiched between the driver's side of the Subaru and the cable barrier.

Deputy Pepin approached Decedent. Chief Deputy Paul Widenstrom and Deputy Aaron Borchardt also came up to Decedent. Decedent was lying face down in the road. He was wearing a grey backpack. They radioed that Decedent was hit but thought that he was still alive because he tensed up when they put handcuffs on him. Decedent was unresponsive after the handcuffs were secured. Law enforcement immediately began life saving procedures for the next nine minutes until EMTs arrived and took over.



Inside the grey backpack, officers found the stolen .45 Smith & Wesson, the Ruger SR40, a methamphetamine pipe and 18.396 grams of methamphetamine. A DNA analysis of both firearms found Decedent's DNA on the grips of both guns and on the trigger of the .45. Officers also located a driver's license for Steven Letexier, a Grand Casino player's card for Letexier, a Visa credit card with Letexier's name, and a Minnesota identification card for Decedent.

An autopsy revealed that death was caused by a gunshot wound to the torso. The bullet had entered the lateral left side of the torso and traveled in a slightly upward direction. The bullet perforated the 7<sup>th</sup> rib, left lung, aorta, esophagus, right lung and 2<sup>nd</sup> rib. Decedent also had a high level of methamphetamine in his body.

A toxicology screen of Deputy Pepin's blood was conducted immediately after the incident. It was negative for all controlled substances and did not contain the presence of any alcohol. Deputy Pepin has been a deputy with the Pine County Sheriff's Office since November 2015. He has never had a complaint or disciplinary issue lodged against him. He is trained yearly in use of force, is a member of the SWAT team, and holds numerous certifications (e.g. first responder, ice rescue, active shooter, etc.).

When the shots fired call was aired on the radio, Deputy Troy Griffith was driving northbound on I35 to respond to the scene. He was three miles south. He passed over 70 vehicles heading northbound to respond to the scene (demonstrating the heavy traffic on the road that day). The northbound traffic was later at a standstill from the scene to over nine miles south.

### **III. Legal Analysis and Determination**

Under Minnesota law, "the use of deadly force by a peace officer in the line of duty is justified only if an objectively reasonable officer would believe, based on the totality of the circumstances known to the officer at the time and without the benefit of hindsight, that such force is necessary:

"(1) to protect the peace officer or another from death or great bodily harm, provided that the threat:

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

"(ii) is reasonably likely to occur absent action by the law enforcement officer; and

"(iii) must be addressed through the use of deadly force without unreasonable delay; or

"(2) to effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony and the officer reasonably believes that the person will cause death or great bodily harm to another person under the threat criteria in clause (1), items (i) to (iii), unless immediately apprehended."<sup>17</sup>

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<sup>17</sup> MINN. STAT. § 609.066 subd. 2. Minnesota law codifies the objective legal standard recognized by the U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989) and *Tennessee v. Garner*, 471 U.S. 1, 11, (1985).

To bring charges against a peace officer for using deadly force in the line of duty, the State must be able to prove beyond a reasonable doubt that the use of force was not justified.<sup>18</sup> The intentional discharge of a firearm “constitutes deadly force.”<sup>19</sup>

In determining whether a peace officer had a legal justification for using deadly force, the facts and circumstances must be reviewed from the perspective of what a reasonable peace officer would have done at the time of the incident and without the benefit of hindsight.<sup>20</sup> In making this determination, allowance must be made for the fact that peace officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. The question is whether the peace officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting the officer, without regard to the officers’ underlying intent or motivation.<sup>21</sup>

The Pine County Sheriff’s Office also has a use of force policy. The policy addresses shooting at a moving vehicle. It states: “A deputy should only discharge a firearm at a moving vehicle or its occupants when the deputy reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the deputy or others. Deputies should not shoot at any part of a vehicle in an attempt to disable the vehicle.”<sup>22</sup>

In determining whether Deputy Pepin acted reasonably, it is important to only consider the information that Deputy Pepin had before he discharged his firearm. The following facts are what Deputy Pepin knew at the time:

1. He heard the dispatch call: “Pine County 92 a disturbance. They have left the casino. Male and female had supposedly had a domestic in the room. Unknown name. Male left in a tan Ford Explorer with a trailer. 571 Robert John Victor. Female called security said that the male left with a bag of meth and a gun in the vehicle. She said that if law enforcement is involved, he will use the gun. He went south on 15, unknown [unintelligible] Little Lena. Female still at the casino; they’re getting her info.”
2. He heard Chief Deputy Widenstrom state that the Expedition passed him, made a U-turn near Hopkins Sand & Gravel, and proceeded northbound on County Highway 61. He heard Chief Deputy Widenstrom state, “He’s running from me.” He knew that Decedent was running from an unmarked vehicle.

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<sup>18</sup> *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006) (citing *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997)).

<sup>19</sup> MINN. STAT. § 609.066 subd. 1.

<sup>20</sup> *Id.* at subd. 2.

<sup>21</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>22</sup> This is consistent with law enforcement practice. Attempting to disable a vehicle with a firearm may cause more injury to passengers and bystanders, especially considering that bullets often fragment upon hitting a vehicle. Law enforcement is trained to direct use of force toward the driver/occupant.

3. He heard Chief Deputy Widenstrom state that the driver threw something out of his door and was driving in the oncoming lane of traffic. He heard Chief Deputy Widenstrom again state the vehicle was driving in oncoming traffic.
4. As Deputy Pepin proceeded northbound to catch up to Chief Deputy Widenstrom, he observed cars pulled off to the side of the road in the oncoming lane.
5. When Deputy Pepin was ahead of Chief Deputy Widenstrom, he had a visual on the Expedition as it traveled 85 to 90 mph in the oncoming lane of traffic in a 55-mph zone.
6. He observed the Expedition travel at high speeds toward oncoming vehicles. The Expedition made no attempt at moving out of the way of oncoming vehicles, forcing them to the shoulder.
7. He observed Decedent twice swerve at vehicles that had pulled off the side of the road.
8. He was involved in the pursuit on County Highway 61 which lasted for 4.6 miles, much of it with the Expedition in the oncoming lane of traffic and taking sharp turns at high speeds.
9. He knew Decedent was not yielding to his siren or lights, and Decedent obviously knew Deputy Pepin was behind him.<sup>23</sup>
10. He knew that the Expedition was a large, heavy vehicle made longer and heavier by the trailer and motorcycle. Deputy Pepin was aware through his training and experience that a motor vehicle is capable of great bodily harm or death and is classified as deadly force<sup>24</sup> if wielded as a weapon by a driver.
11. He was behind Decedent when Decedent entered I35 in the wrong direction. Deputy Pepin was aware that the exit was marked by clearly visible signs reading: “one way” and “do not enter,” indicating that Decedent intentionally entered the freeway in this direction in an attempt to make it difficult for law enforcement to catch him.
12. He was aware that traffic was heavy (he described traffic in his statement as “swamped”). As a deputy with Pine County for five years, he was aware of traffic levels and familiar with this stretch of I35.

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<sup>23</sup> At one point during the pursuit on County Highway 61, Decedent put both of his hands out the window, but continued to travel at 85 mph.

<sup>24</sup> “Deadly force” is defined as “force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing, death or great bodily harm.” MINN. STAT. § 609.066 subd. 1.

13. Deputy Pepin watched as Decedent entered I35 and directly confronted oncoming traffic.
14. When Deputy Pepin's squad approached Decedent from the south on I35, Deputy Pepin was aware of the heavy traffic coming northbound behind him. He was aware that vehicles were slowing down and starting to stop immediately behind him as the Expedition pulled out.
15. As Deputy Pepin approached, he was aware that Decedent was outside the vehicle and possibly in possession of a firearm, which heightened the threat to Deputy Pepin and other motorists.
16. Deputy Pepin knew that Decedent saw him because Decedent abandoned his plan to remove the motorcycle as Deputy Pepin approached. Decedent's actions demonstrated he only cared about getting away from Deputy Pepin as he left the trailer ramp down and the motorcycle unhooked when he took off.
17. Deputy Pepin was face-to-face with Decedent when he stepped out of the squad car and Decedent was behind the driver's wheel of the Expedition immediately in front of him. Decedent was in a position to drive forward and strike Deputy Pepin or the vehicles approaching in the oncoming lane of traffic.
18. Deputy Pepin watched Decedent drive forward into the oncoming lane of traffic, near his squad.
19. Deputy Pepin was aware of his yearly use of force training and made a decision to stop the driver by firing at Decedent in the Expedition to protect himself and others.
20. Deputy Pepin was aware that other measures would not have stopped the threat because of the split-second decision that was needed, and the fact that Decedent pulled out into the lane the moment Deputy Pepin stopped and stood up. For instance, there was no time to deploy spike strips (and it could not have safely been done given the oncoming northbound traffic).

Given the facts above, and the law, Deputy Pepin's use of force was necessary and justified under Minnesota Statutes section 609.066 subdivision 2(1). Based on the totality of circumstances, an objectively reasonable officer would believe that it was necessary to protect the officer or another from great bodily harm or death. A motor vehicle, and the manner and degree to which Decedent was using the vehicle, would leave an officer with no other reasonable conclusion than to believe that death or great bodily harm would occur. Driving toward a deputy on I35 and into oncoming traffic of vehicles traveling 70 to 80 mph on day with heavy traffic does not leave room for a notion that Decedent was doing anything but operating in a manner that could cause death or harm to Deputy Pepin and the many innocent people traveling north on the highway. The 4.6 mile pursuit (including driving head-on toward vehicles and swerving at vehicles that had already gotten out of his way) and the act of going south on the highway in the

oncoming lane demonstrated Decedent's disregard for the lives of others in pursuit of his own selfish interests to evade an arrest. Decedent posed a substantial and deadly danger. Had Deputy Pepin not acted, there was a high probability Decedent would have killed others. In sum, (i) Deputy Pepin was able to articulate the threat, (ii) death or bodily harm was reasonably likely to occur without Deputy Pepin's intervention, and (iii) he had to address the situation through use of deadly force to stop the threat without unreasonable delay.

Deputy Pepin's use of force was also necessary and justified under section 609.066 subdivision 2(2). Deputy Pepin knew or had reasonable grounds to believe that Decedent committed or attempted to commit a felony. For instance, fleeing in a motor vehicle is a felony.<sup>25</sup> Using a motor vehicle as a weapon by threatening others is also a felony.<sup>26</sup> Based upon Decedent's actions described above, Deputy Pepin reasonably believed that Decedent would cause death or great bodily harm unless immediately apprehended. The same analysis as subdivision 2(1)(i)-(iii) applies to this section as well.

#### **IV. Summary**

Deputy Pepin's use of force was justified. We will neither issue a complaint nor present this to a grand jury.

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<sup>25</sup> MINN. STAT. § 609.487 subd. 3.

<sup>26</sup> MINN. STAT. § 609.222.