

REPORT OF INVESTIGATION
OFFICER INVOLVED DEATH (OID) OF MICHAEL L. FUNK

This report will serve as the summary of the Officer Involved Death (OID) investigation of Michael L. Funk, which occurred on December 5, 2015, in the alley behind Eagle Nation Cycles, 206 Main St, Neenah, Wisconsin.

On December 5, 2015, the Neenah Police Department (NEPD) was dispatched to Eagle Nation Cycles for a call of a hostage situation and man with a gun who had fired a shot inside the building. Officers responded to the scene and soon learned that the hostages were facing an imminent threat from the gunman, later identified as Brian T. Flatoff. A team of officers entered the back door of Eagle Nation Cycles and was fired upon by Flatoff and returned fire. One officer was hit in his ballistic helmet by a bullet fired by Flatoff. The team of officers retreated from Eagle Nation Cycles and took up positions at both ends of the alley behind the building. During the continuing hostage situation, Funk was shot and killed by two NEPD officers after he exited the back door of Eagle Nation Cycles and produced a handgun. The entire timeframe from when officers entered Eagle Nation Cycles to when Funk was shot in the back alley was three minutes and forty seconds. Law enforcement fired a total of 25 shots during the event—six inside Eagle Nation Cycles and 19 outside in the alley.

The NEPD requested the Wisconsin Department of Justice-Division of Criminal Investigation (DOJ-DCI) to respond as the lead investigating agency, in accordance with Wisconsin State Statute §175.47(3). This summary report was prepared pursuant to Wisconsin State Statute §175.47(5).

DCI Appleton Field Office Special Agent in Charge Michael Sasse assigned Special Agent Kyra Schallhorn as the lead investigator and Special Agent Lisa Wilson as the secondary investigator. An additional 24 special agents responded to the incident and assisted in the investigation.

Special agents interviewed critical witnesses; conducted a neighborhood canvass; and identified, documented, collected and preserved evidence at the scene. Special agents were assisted in some of those duties by members of the Appleton Police Department, Town of Menasha Police Department, Winnebago County Sheriff's Department, Wisconsin State Patrol and Wisconsin State Crime Laboratory (WSCL). Many evidentiary items were submitted to the WSCL for analysis.

Special agents responded to Theda Clark Hospital, in Neenah, where the body of Michael Funk had been transported from the scene. Special agents accompanied the body to the Fond du Lac County Medical Examiner's Office and attended the autopsy of Funk conducted on December 7, 2015, by Fond du Lac County Deputy Medical Examiner Dr. Giese.

Special agents interviewed law enforcement officers who responded to the Eagle Nation Cycles hostage situation and who were involved in the use of deadly force against Funk. NEPD Officer

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Kuffel was the only officer to fire his weapon while inside Eagle Nation Cycles. NEPD Officers Hoffer and Ross were the only two officers who fired outside in the alley, resulting in the death of Funk. The three involved officers were interviewed by DCI on December 9, 2015.

Special agents obtained and reviewed reports generated by other responding law enforcement agencies to the Eagle Nation Cycles hostage situation and interviewed those responding officers who had not written reports.

Special agents obtained and reviewed all computer aided dispatch (CAD) reports, 911 calls, radio communications, squad video recordings, body camera recordings, and other surveillance video associated with the hostage situation.

As a result of the investigation conducted by the WI DOJ-DCI, the following information was learned:

Request for Police Service

On December 5, 2015, at 8:53 a.m., the Winnebago County Communications Center received a 911 call regarding a hostage situation and man with a gun who had fired a shot inside Eagle Nation Cycles, 206 Main St, Neenah, Wisconsin. On-duty NEPD officers were dispatched and responded to the location. NEPD SWAT team members and additional officers and SWAT teams from surrounding agencies were also called in to respond. Officers from the following agencies responded to the situation: Appleton Police Department, Fond du Lac Police Department, Menasha Police Department, Town of Menasha Police Department, Winnebago County Sheriff's Department and the Wisconsin State Patrol.

Information regarding the hostage situation was being relayed through a series of phone calls between police and individuals inside Eagle Nation Cycles at the time. One individual inside the business had called his brother and then left the phone line open as the situation continued. The brother called 911 to report the situation and relayed information that he heard through the open phone line. An individual located in the basement of the Eagle Nation Cycles building also called 911 to report information. Police negotiators then made phone calls and spoke to individuals inside the business, including Funk and the gunman, during the hostage situation. Any information the police received about what was occurring inside Eagle Nation Cycles and what the gunman was doing and/or saying while there was relayed to them via these phone calls. Police dispatchers then relayed some of that information to officers on scene via the radio.

An individual, later positively identified as Brian T. Flatoff, was at Eagle Nation Cycles, demanding to speak with someone about a motorcycle. Flatoff was armed with a gun and had fired one round inside the business. Officers learned that two or three individuals were being held hostage in the business by Flatoff. Officers were provided a description of Flatoff as a white, male, in a plaid jacket, with long hair and a long beard.

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As officers began to arrive on scene, information was relayed by dispatch that Flatoff had told hostages that if the individual he wanted to speak to did not arrive within five minutes, he would start shooting. Information was then relayed by dispatch that Flatoff stated he would start shooting in one minute.

Upon learning of Flatoff's statement that he would start shooting hostages in one minute, five members of the NEPD formed a "Hasty Team" to enter the back door of Eagle Nation Cycles. A "Hasty Team" was defined as an immediate reaction team for critical incidents. The "Hasty Team" consisted of Lieutenant Thompson, Lieutenant O'Bre, Officer Kuffel, Officer Hoffer and Officer Ross.

The "Hasty Team" officers had been told by dispatch that the front door of Eagle Nation Cycles was locked, but the back door was open. At approximately 9:42 a.m., the "Hasty Team" entered through the back door, announcing their police presence and issuing commands. The first two officers in the door—Lt Thompson and Lt O'Bre—stepped to their right and fell down a flight of stairs into the basement of the building. The second two officers in the door—Officer Kuffel and Officer Hoffer—almost immediately started receiving gunfire from inside the motorcycle shop. Officer Kuffel returned fire from his AR-15 .223 caliber rifle, in the direction from which the gunfire had come. There was an additional exchange of gunfire between the gunman inside the building and Officer Kuffel, before all officers were able to retreat or be pulled out the back door. Officer Hoffer was hit in his ballistic helmet by a bullet fired by the gunman. Officers again issued commands to the gunman from outside the building, and the gunman responded by firing additional rounds. The investigation later determined that Flatoff was armed with a Black Masterpiece Arms 9mm pistol, and it was Flatoff who had fired all rounds inside Eagle Nation Cycles.

All "Hasty Team" officers retreated from the immediate vicinity of the back door of Eagle Nation Cycles. Lt Thompson, Lt O'Bre and Officer Kuffel retreated to the west in the alley behind the building. Officer Hoffer and Officer Ross retreated to the east and joined other law enforcement officers who were positioned at the end of the alley, behind a corner of a building housing Vicky's Beauty Shop. Other officers already positioned at the east end of the alley were NEPD Sergeant Eichmann, Menasha Police Department (MPD) Lieutenant Hanchek and MPD Officer Berna. Officer Berna was positioned at the corner of the building, holding a shield with the word "Police" on it.

At approximately 9:45 a.m., officers positioned at the east end and the west end of the alley behind Eagle Nation Cycles reported hearing additional gunshots being fired. None of the officers saw who was shooting or where the gunshots were coming from. The investigation later revealed that those gunshots were fired by Flatoff from inside Eagle Nation Cycles. At the same time those gunshots were being fired, an individual, later identified as Michael Funk, exited out the back door of Eagle Nation Cycles and into the alley. A recorded telephone call taking place between Flatoff and police negotiators captured Flatoff telling someone to shut the back door and stating,

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“if you fucking run out that back door I’m going to fucking unload on you.” A video surveillance system located within Eagle Nation Cycles appeared to show Flatoff firing his gun toward Funk as Funk exited the back door.

Lt O’Bre’s unoccupied NEPD squad #1 was positioned at the west end of the alley, facing east, toward the back door of Eagle Nation Cycles. The squad camera captured audio of the gunshots fired from inside Eagle Nation Cycles and video of Funk abruptly exiting the back door and falling forward onto the ground. Funk got up and moved toward the rear driver’s side of a truck parked in the alley near the back door of Eagle Nation Cycles. Funk appeared to draw a firearm from his right side, and the investigation later confirmed that Funk had a Kimber .45 caliber handgun in his right hand and an empty holster on his right side.

Funk’s attention was focused on the same back door of Eagle Nation Cycles he had just exited, and he pointed his firearm in the direction of the back door. As Funk then began to turn to his left and away from the back door of Eagle Nation Cycles, Officers Hoffer and Ross both used deadly force, firing their AR-15 .223 caliber rifles at Funk. Funk fell forward onto the ground, and an officer then yelled, “Show me your hands.” Funk remained in the alley behind Eagle Nation Cycles until he was rescued, approximately 45 minutes after the shooting, by officers utilizing a Bearcat armored vehicle and transferred to Gold Cross ambulance.

During the continuing hostage situation, three additional individuals, later identified as GF, RM and MP, exited the back door of Eagle Nation Cycles. The three individuals followed commands given to them by officers and were taken into custody and later released. Hostage negotiators continued to talk to and negotiate with Flatoff, who remained inside the building. Eventually, Flatoff agreed to surrender. Flatoff fired one additional round inside Eagle Nation Cycles, which he told negotiators on the phone was an accidental discharge. Flatoff then exited the back door of the building and was taken into custody. One final individual, later identified as SE, who had been in the basement of the building, then exited the building and was taken into custody and later released.

Prior to the hostage situation being fully resolved, the NEPD contacted and requested DCI to respond and investigate the OID of Funk. It was decided that DCI would investigate both the OID of Funk, as well as the criminal activity of Flatoff that lead up to the OID.

Because of previous enforcement contacts by the NEPD and a Federal lawsuit filed against the NEPD by the owners of Eagle Nation Cycles, the Winnebago County district attorney requested that the Attorney General’s Office act as special prosecutor and review the OID of Funk. A separate criminal case against Flatoff is being pursued by the Winnebago County District Attorney’s Office.

Scene Examination

Special agents, along with the assistance of the Wisconsin State Crime Lab (WSCL) and the Wisconsin State Patrol (WSP) Technical Reconstruction Unit (TRU), conducted an examination of the crime scene and surrounding area on December 5, 6 and 7, 2015. The crime scene was located at a physical address of 206 Main Street, Neenah, Wisconsin, and extended to a neighboring alleyway behind the building. The structure located at 206 Main St was a one story commercial business with a full basement. It housed three separate businesses, identified as Eagle Nation Cycles, Eternal Flame Tattoo and Piercing, and 360 Custom Skate Shop. The majority of the structure was occupied by Eagle Nation Cycles. Gord's Pub was located in a building to the west of Eagle Nation Cycles, at 210 Main St, Neenah, Wisconsin.

The 200 block of Main St in Neenah is oriented in a southwest to northeast fashion. For simplicity and clarity, the front or Main Street side of Eagle Nation Cycles was considered a north facing direction, with the alleyway behind the building running west to east.

The 300 block of W Doty St was located east of the crime scene. The structure located at 300 W Doty St was identified as Vicky's Beauty Shop. The property encompassed the area between the alleyway and Martens St to the south. The north side of the structure extended to the edge of the alleyway.

The alleyway located behind the 200 block of Main St was an asphalt paved roadway approximately 1 and ½ car widths wide. From W Doty St, the elevation to the west was slightly downward. Located in and around the alleyway on December 5, 2015, were several vehicles, including a blue 2001 Chevrolet Silverado pick-up truck. The truck was facing to the west, parked on a slight diagonal, outside the back door of Eagle Nation Cycles.

Evidence from both inside Eagle Nation Cycles and from the neighboring alleyway was documented, collected and preserved by special agents. Evidence items collected from inside the building or just outside the back door of the building included a Black Masterpiece Arms 9mm pistol with silencer/suppressor attachment, magazine and bullets; six fired .223 caliber cartridge cases; 25 fired 9mm cartridge cases; multiple fired bullets and/or bullet fragments; a DVR surveillance system; computer equipment; cellular telephones; other weapons and unfired bullets; and other miscellaneous items. Evidence items collected from the alleyway included a Kimber 1911 Pro Carry II .45 ACP with magazine and bullets, 18 fired .223 caliber cartridge cases, and a few fired bullets and/or bullet fragments.

Review of Related Audio and Video

Special agents obtained and reviewed multiple audio and video recordings related to this incident, including 911 calls; radio traffic maintained by Winnebago County dispatch; body cameras worn by Lt O'Bre, Sgt Eichmann and Officer Ross; squad videos from NEPD squads driven by Lt

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O'Bre, Sgt Eichmann and Officer Ross; a DVR surveillance system located within Eagle Nation Cycles; and recorded telephone calls between hostage negotiators and Flatoff.

Because of the complexity of this incident and the different locations where events occurred, there was no one video or audio that captured the entire incident. Lt O'Bre's NEPD squad 1 was parked at the west end of the alley, facing east, toward the back door of Eagle Nation Cycles. The squad camera captured video of events that occurred in the alley. The body camera worn by Officer Ross captured audio and video related to both the "Hasty Team" entry into Eagle Nation Cycles and the shooting of Funk. The body camera worn by Sgt Eichmann captured audio and video of officers positioned at the east end of the alley and the shooting of Funk. A video surveillance system located within Eagle Nation Cycles captured video only (no audio) of events occurring inside the business during the incident. Audio of some events occurring inside the business was captured in the recorded phone calls between negotiators and Flatoff.

Based on a review of all available video and audio recordings, the following is a summary and approximate timeline of events surrounding the incident:

Beginning at approximately 8:55 a.m., initial officers were dispatched to Eagle Nation Cycles, 206 Main St, Neenah, for a call of a man with a gun and shots fired. Officers began responding to the location. Once on scene, officers stopped a white truck in the area and took the driver into custody. Officers then learned that the driver of the truck was not the shooter from inside Eagle Nation Cycles.

Officers set up a perimeter on the east end of the alley located behind Eagle Nation Cycles, at the corner of Vicky's Beauty Shop. Other officers gathered and formed a "Hasty Team" on the west side of the alley behind Eagle Nation Cycles, near the back of Gord's Pub. A description of the shooter was given over the radio as a white, male in a plaid jacket, with long hair and long beard.

9:22 a.m.: Dispatch relayed information via the radio that the shooter indicated he will start shooting in five minutes if someone does not arrive at the location.

9:39 a.m.: Dispatch relayed information via the radio that the shooter just told the subjects inside that if someone doesn't get there within the next minute or so, everyone is going to die.

9:41:45 a.m.: Officers located to the west of Eagle Nation Cycles began their approach toward the back door. (Seen on Lt O'Bre's squad 1 video and Officer Ross' body camera video.)

9:42:02 a.m.: Officers made entry into the back door of Eagle Nation Cycles. (Seen on Lt O'Bre's squad 1 video and seen and heard on Officer Ross' body camera video.)

9:42:11 a.m.-9:42:30 a.m.: Several exchanges of gunfire were heard. All officers backed out or were pulled out of the building. (Seen and heard on Officer Ross' body camera video and seen on Lt O'Bre's squad 1 video.)

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9:42:48 a.m.: Additional gunshots were heard after officers yelled to the gunman from outside. All officers retreated back away from Eagle Nation Cycles. (Seen and heard on Officer Ross' body camera video and seen on Lt O'Bre's squad 1 video.)

9:45 a.m.: Flatoff told Funk to close the back door of Eagle Nation Cycles. Flatoff stated, "if you fucking run out that back door I am going to fucking unload on you." Funk moved to the back door and exited. (Heard on negotiator phone call to Flatoff and seen on Eagle Nation Cycles surveillance video. Time only approximate.)

9:45:29 a.m.-9:45:32 a.m.: Gunshots were heard. Funk abruptly exited the back door of Eagle Nation Cycles and fell forward onto the ground. Funk got up, moved toward the truck parked in the alley, and appeared to draw a firearm from his right side. Funk's attention was focused toward the north, on the same back door of Eagle Nation Cycles he had just exited, and he pointed the firearm in the direction of the back door. (Seen on Lt O'Bre's squad 1 video.)

9:45:34: Sgt Eichmann stated, "This is him." (Heard on Sgt Eichmann's body camera video.)

9:45:37 a.m.-9:45:42 a.m.: Funk began to turn to his left, toward the west and counter clockwise away from the back door of Eagle Nation Cycles. Gunshots were heard, and officers located at the east end of the alley were seen shooting toward Funk. Funk fell forward and remained lying in the alley. (The shooting of Funk is seen on Lt O'Bre's squad 1 video. Officers are seen and gunshots are heard on Officer Ross' squad 8 video and on Sgt Eichmann's and Officer Ross' body camera videos.)

9:45:57 a.m.: An officer yelled, "Show me your hands." (Heard on Sgt Eichmann's and Officer Ross' body camera videos.)

9:46:21 a.m.: An officer called out over the radio that one suspect is down, with long gray and black hair.

10:00 a.m.: Witness GF, who had been in the basement of Eagle Nation Cycles, exited the back door and was taken into custody.

10:01 a.m.: Witnesses RM and MP exited the back door of Eagle Nation Cycles and were taken into custody.

10:26 a.m.-10:29 a.m.: Part of the rescue team was in the back of the Bearcat armored vehicle. An officer in the Bearcat armored vehicle requested another officer to escort the Gold Cross ambulance with Funk to Theda Clark Hospital.

12:54 p.m.: Flatoff exited the back door of Eagle Nation Cycles, and was taken into custody.

After Flatoff left the business, Witness SE, who had been in the basement of Eagle Nation Cycles, exited the back door and was taken into custody.

Autopsy Examination

On December 7, 2015, an autopsy of Funk was conducted at the Fond du Lac County Medical Examiner's Office by Deputy Medical Examiner and Forensic Pathologist Dr. Kristinza Giese. DCI special agents were present during the autopsy and documented the process and maintained articles of evidentiary value and personal effects. Provisional autopsy findings indicated that Funk had nine identified entrance wounds and died because of multiple gunshot wounds. The majority of these wounds were to the left side of his back; his left shoulder; and his left torso, hip and leg. Funk also sustained one wound to the right lower back and right buttock.

Witness Interviews

During the OID investigation, special agents interviewed critical witnesses and conducted a neighborhood canvass of the area.

Twelve individuals were interviewed regarding their history with and knowledge of Brian Flatoff. None of those individuals witnessed the events at Eagle Nation Cycles on December 5, 2015.

Two individuals who were held hostage by Flatoff, identified as RM and MP, were interviewed regarding what occurred inside Eagle Nation Cycles. Two individuals who were located in the basement of Eagle Nation Cycles, identified as GF and SE, were also interviewed.

Twenty-eight individuals who lived or worked within the surrounding area were interviewed to determine what they saw or heard during the incident. Almost all of those individuals were aware of the heavy police presence in the area, but most did not have any specific information about the incident. Several individuals heard gunshots but provided no additional specific information.

The following is a summary of information provided by individuals who witnessed the police response to Eagle Nation Cycles and/or the subsequent OID of Funk.

Witness RM

RM was inside Eagle Nation Cycles during the hostage situation. RM estimated that 45 minutes into the hostage incident, he saw the back door by the alley open. RM stated he was near the lunch counter, on a bar stool, smoking a cigarette at the time. RM immediately saw the police shield coming through the door, and he heard an officer say, "Police, put the gun down." RM stated he heard this repeatedly. RM stated he got down behind the counter to get out of the way. RM stated that Flatoff and Funk were close to each other, near Funk's desk.

RM stated there was an exchange of gunfire. RM estimated he heard 10 to 15 gunshots being fired. RM described the gunshots as being very fast, and from their sound, he could not tell which direction they were going. RM stated there was approximately a one minute delay, and then he heard 5 to 10 additional gunshots. RM said he did not see where these gunshots were from, but

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they were likely from Flatoff from the way they sounded. RM stated he was still behind the counter, and he didn't actually see who was shooting. RM said the shooting sounded like it was coming from the inside the building because it was very loud.

RM said when all the shooting ended, there was a heavy, smoke-type fume in the air, which he described as a yellowish powdery substance. (The investigation later determined that a fire extinguisher had been struck by a bullet.) RM heard Flatoff talking, and RM heard Flatoff on the phone with someone. RM heard Flatoff say, "Shut the back door." RM stated he didn't know where Funk went, and he didn't see Funk inside anymore. RM said Flatoff told both him and another individual inside to get out. RM stated once he got out the back door, he immediately surrendered to the police and cooperated fully. RM stated that when he exited the back door, he saw Funk lying on the ground face down in the alley behind the shop.

Witness MP

MP was inside Eagle Nation Cycles during the hostage situation. MP did not know the gunman that was inside the building. MP stated that the rear door of the shop opened, and he observed at least two police officers, with the first officer having a shield in front of him. MP heard the officers shouting into the shop, telling the gunman to drop his weapon and to get onto the floor. MP heard officers repeat these commands. MP observed gunshots being exchanged between the officers and the gunman. MP could not state who shot first. MP said he immediately dropped to the floor and tried to hide near a table. MP said there was a lot of smoke in the room.

MP believed the gunman told Funk to close the door. MP then heard gunshots from inside the shop. MP stated that he could not see who or what was being shot at. MP continued to lie on the floor under the table and could not see what was happening. MP stated that the gunman told MP and another individual in the business to get out. MP said he and the other individual went to the back door and walked out. Immediately outside the door, MP and the other individual encountered police officers and were taken into custody.

Witness GF

GF was located in the basement of Eagle Nation Cycles during the hostage situation. GF said he heard what sounded like gunfire. GF came up from the basement, and he heard someone say, "close the door, I don't want to get shot." GF observed an unknown individual holding a gun. GF described the person as a white, male with shoulder length hair and goatee, wearing a beanie hat and a gray, hooded sweatshirt. The unknown individual saw GF and told him to leave. GF exited the back door of Eagle Nation Cycles and encountered law enforcement. When GF exited the back door, he observed Funk lying facedown on the ground, and GF assumed that Funk was dead.

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Witness SE

SE was located in the basement of Eagle Nation Cycles during the hostage situation. Around 9:10 a.m., SE heard what sounded like a single gunshot from upstairs. SE called 911 and told the dispatcher he thought there was an active shooter inside Eagle Nation Cycles. About 45 minutes later, SE heard an estimated two dozen gunshots. SE heard a lot of yelling just before the gunshots, but he did not know what was said. Eventually the 911 dispatcher called SE back and told him he could exit the business.

Witness DK

DK was a citizen witness who arrived in the area at approximately 9:15 a.m. DK observed police caution tape set up, establishing a perimeter around Eagle Nation Cycles. DK observed several police officers, many of whom were in SWAT/tactical gear. DK saw several officers set up on the northeast corner of Vicky's Beauty Shop, where W Doty St intersects with the alley directly behind Eagle Nation Cycles. The officers had long guns drawn and were pointing their weapons down the alleyway. DK estimated that he was about 100 yards southeast from where he saw the officers on the corner near Vicky's Beauty Shop.

DK heard what sounded like multiple gunshots fired from inside Eagle Nation Cycles. DK observed one police officer drop to his knees and other officers tend to him. DK heard and saw the officers on the corner of Vicky's Beauty Shop discharge their long guns and fire multiple rounds. DK also heard an officer yell verbal commands, "show me yours hands" or "let me see your hands" and "drop the gun." DK did not know if he heard the verbal commands or the gunfire first. DK could not see the person that officers were giving commands to because DK could not see down the alleyway behind Eagle Nation Cycles.

Witness SP

SP arrived for work around 9:15 a.m. to 9:20 a.m. SP stated that the area was taped off with police tape, and there were multiple police officers outside the area of his workplace. SP parked in the parking lot across the street from Vicky's Beauty Shop to watch what was going on. Shortly after SP arrived, he heard multiple gunshots, which sounded like fully automatic gunfire. SP was located approximately 100 feet away from the officers who were standing at the corner of Vicky's Beauty Shop. SP thought there were three officers at that spot when the gunshots were fired, but he couldn't say for sure. SP recalled that one officer had a rifle, and the officer with the rifle was the officer he observed shoot. SP could not see what the officer was shooting at. SP stated that the officer was shooting in a south to southwest direction towards the alley.

Witness LM

LM was located in her workplace during the incident. At approximately 9:15 a.m., LM observed police officers with guns drawn running outside the front of the business. At 10:00 a.m., LM

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heard police officers yelling repeatedly “drop your weapon.” LM heard this over a speaker located inside the business that was monitoring the audio from a surveillance camera attached to the rear of the business near the alley. (The investigation later revealed that the surveillance camera was not recording at the time.) LM then heard 10 to 30 what she believed to be gunshots.

Witness VH

VH was located in her place of business between 9:00 a.m. to 10:45 a.m. At approximately 10:00 a.m., VH heard the police yelling very loudly, “Put your weapon down,” and the police repeated the command at least four times. VH observed four police officers outside the business, some armed with long guns and some with pistols. VH then heard 15 to 20 gunshots in a continuous fire pattern. VH said she heard both the commands and gunshots over a speaker located inside the business that was monitoring the audio from a surveillance camera attached to the rear of the business near the alley. Upon hearing the gunshots, VH and the others in the business got on the floor. Approximately 20 minutes after the first gunshots, VH heard the police yelling loudly again. VH then heard another 15 to 20 gunshots.

Witness KR

KR was in her apartment sleeping when she was awakened by several sirens. KR looked out her windows and observed several squad cars in the area. KR monitored the Winnebago County scanner, and heard the dispatch of “shots fired, 200 block of Main Street, Neenah.” KR’s windows face both Main and Doty Streets, and she observed many law enforcement officers and a “tank type vehicle” in the area.

Between 10:30 a.m. and 11:00 a.m., KR heard 15 to 20 gunshots coming from the area southwest of her apartment, toward Vicky’s Beauty Shop. KR heard police officers yelling, but she could not hear what they were saying. KR stayed in her apartment and continued to listen to the scanner. Approximately one hour after the first gunshots, KR heard an additional 15 to 20 gunshots. Between the first and second sets of gunshots, KR heard officers yelling “Get down—put your hands up.”

Witness SS

SS stated that he was standing near an empty lot on Martens St, and he saw SWAT team members gathering their equipment. SS stated that he saw the SWAT team members get their shields up and charge toward Eagle Nation Cycles. SS stated that he then heard 10 to 15 gunshots. SS stated that he could not see who was shooting or where the shooting was coming from. SS stated that he went inside his house, and he heard several more gunshots. SS stated that he heard SWAT team members say “Get down!” and “Put your gun down!” SS stated that after the second set of gunshots he heard SWAT team members say “Steve put your gun down.”

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Witness SK

SK was in her home during the incident. SK observed several police officers lined up in what she described as a “stack” on a front yard to the east of her house. At approximately 9:30 a.m., SK heard five, what she believed to be gunshots, in rapid succession. SK was on the phone when she heard these gunshots. Approximately 15 to 20 minutes later, SK heard additional gunshots.

Witness EH

EH estimated that he heard four to five gunshots around 9:30 a.m. EH stated that he made a phone call at approximately 9:42 a.m., and while on that call, he heard additional gunshots, but he did not know how many. EH stated that he saw several police officers posted near Vicky’s Beauty Shop.

Officer Interviews

During the OID investigation, special agents interviewed eighteen law enforcement officers who responded to the hostage situation at Eagle Nation Cycles regarding their actions and observations. Special agents also received and reviewed reports written by officers who responded to the scene but were not interviewed.

The following is a summary of information provided by those officers who made entry into Eagle Nation Cycles, those who were positioned at the east end of the alley and witnessed Funk coming out of the building and being shot, and those who used deadly force against Funk.

NEPD Lieutenant Thompson

Lt Thompson is the training lieutenant for the NEPD and primarily works Monday through Friday. On Saturday, December 5, 2015, Lt Thompson was off-duty when he received a SWAT page at approximately 9:19 a.m. Lt Thompson said the page stated something similar to “Hostage Situation at Eagle Nation Cycles,” and he responded to the NEPD to gear up.

When Lt Thompson arrived on scene outside Eagle Nation Cycles, officers had received information through dispatch that an unidentified suspect inside the building made a threat that he would kill hostages in one minute. Lt Thompson stated that officers made the determination to enter the building based on the threat to the hostages. These officers, whom Lt Thompson identified as himself, Lt O’Bre, Officer Kuffel and Officer Hoffer, made entry to Eagle Nation Cycles through the back door in the alleyway.

Lt Thompson indicated that he was the first officer to enter the building, and he was holding a tactical shield in his right hand and his duty-issued pistol in his left hand. Lt Thompson was looking through a small window in the tactical shield, and it was difficult to see. Upon entry through the door, Lt Thompson moved to the right. Lt Thompson fell down a flight of stairs, and Lt O’Bre fell down the stairs with him. When Lt Thompson got his balance back and stood up, he

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began hearing gunshots. Lt Thompson heard what he described as “lighter” gunfire, followed by louder, more intense gunfire. Lt Thompson thought he heard approximately 20 gunshots total. Lt Thompson stated that when he went back up the stairs, he held the tactical shield higher to try to provide cover for the other officers as they exited the building. The four officers exited the building out the same door they had just made entry into. Lt Thompson said he was the last officer to leave the building.

When Lt Thompson was outside the door, he heard Officer Kuffel state something similar to “Hoffer’s hit.” Lt Thompson then observed Officer Hoffer on the ground near the building. Lt Thompson heard what sounded like automatic gunfire coming from inside the building and toward their direction.

Lt Thompson said when they heard this gunfire, the four officers retreated away from the building to take cover. Lt Thompson, Lt O’Bre, and possibly Officer Kuffel went to the west to take cover near Gord’s Pub. Lt Thompson believed Officer Hoffer went to the east, near W Doty St, to take a position of cover there. Approximately two minutes later, Lt Thompson heard additional gunshots. Lt Thompson could not identify where the gunshots were coming from.

Lt Thompson believed negotiations were taking place between law enforcement and the suspect inside Eagle Nation Cycles. The negotiator indicated that two hostages would be coming out of the building. Lt Thompson then observed two individuals come out of the building with their hands up. Lt Thompson and other officers approached the two individuals using a Bearcat armored vehicle for cover. While approaching the two individuals for handcuffing, Lt Thompson observed an individual lying face down in the alleyway near the back door to Eagle Nation Cycles. Lt Thompson did not know how this individual got there or how long this individual had been lying in the alleyway.

Lt Thompson and other law enforcement officials organized a plan to extract the individual from the alleyway. Lt Thompson said he and other officers again used the Bearcat armored vehicle for cover and approached the individual. Lt Thompson observed that the individual was face down and had a silver handgun with a wooden grip in his right hand. Lt Thompson said the individual’s right arm was extended away from his body. Lt Thompson observed that the individual had his hand around the grip of the gun with his index finger on the trigger, inside the trigger guard. Lt Thompson removed the gun from the individual’s hand and placed the gun near a concrete block located in the alleyway. Lt Thompson and another officer picked up the individual and moved him into the back of the Bearcat armored vehicle. Lt Thompson observed a substance similar to blood on the individual’s forehead, but he did not observe any other injuries to the individual. The individual was transported to an ambulance near the scene to be taken to the hospital.

NEPD Lieutenant O’Bre

Lt O’Bre indicated he was a former tactical team leader for the NEPD, and he was the day shift supervisor on Saturday, December 5, 2015. Lt O’Bre was at the NEPD when a weapons call came in at the location of 206 Main Street, Neenah, WI, the address of Eagle Nation Cycles.

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Lt O'Bre responded to the scene and parked his squad car on the west end of the alley with the front of the car facing the rear door of Eagle Nation Cycles. Lt O'Bre was directing other officers to various perimeter locations, talking to dispatch, setting up a "Hasty Team," listening to radio updates and trying to get an overall sense of what was occurring inside Eagle Nation Cycles. Lt O'Bre obtained information from dispatch that the incident was still a hostage situation and not an active shooter situation.

Lt O'Bre indicated that NEPD Officer Ross arrived and met Lt O'Bre near the southwest corner of Gord's Pub. Lt O'Bre heard dispatch relay that the suspect was giving five minutes to speak with someone or the suspect would start shooting people. Lt O'Bre indicated other officers had arrived at his location, and NEPD Officer Kuffel formed a "Hasty Team." Lt O'Bre said a "Hasty Team" was a term used to describe a team, or group of officers, that could respond hastily to an active threat situation when potential loss of life was at risk. Lt O'Bre heard dispatch relay that the suspect was now giving one minute to speak with someone or the suspect would start shooting people.

The decision was made for the "Hasty Team" to make entry into the business. Lt Thompson was the lead officer with a ballistic shield in his right hand and a handgun in his left hand. Lt O'Bre was second in the stack with his rifle. Officer Kuffel, Officer Hoffer and Officer Ross were in the stack behind Lt O'Bre. The "Hasty Team" approached the rear door of Eagle Nation Cycles from Gord's Pub. When entry was made, it was pitch black inside the business, and the officers were backlit from the brightness of the outdoors. Lt O'Bre observed an individual wearing a plaid coat, which matched the description of the suspect. Lt O'Bre said he did not observe a weapon in the individual's hand.

Once inside the rear door, Lt Thompson and then Lt O'Bre stepped to the right. They both fell down a stairwell and landed on the cement floor at the bottom. Lt O'Bre indicated he immediately got up and began to ascend the stairs he had just fallen down. Lt O'Bre remembered seeing the vapor trails from bullets crossing above his head. He believed the gunshots were coming through the wood near the stairwell or crossing above the cement floor. Lt O'Bre then observed the muzzle blast from his fellow officers returning gunfire near the rear doorway.

Lt O'Bre and Lt Thompson crawled out the rear door on their hands and knees while their fellow officers were returning gunfire. Officer Kuffel grabbed Lt O'Bre and pulled him out the doorway. Lt O'Bre said he, Lt Thompson and Officer Kuffel went to the west and back to the southwest corner of Gord's Pub, while Officer Ross and Officer Hoffer went to the east.

Lt O'Bre believed the officers may have been set up for an ambush, and Lt O'Bre and other officers began to strategize and coordinate new contingency plans. Officers located near Gord's Pub continued to cover the rear door and west side of Eagle Nation Cycles, as well as some second story locations which were a safety concern for officers if the situation was indeed an ambush setup for law enforcement.

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Lt O'Bre stated he heard additional gunfire. Lt O'Bre indicated he knew a subject was down outside the business near the alley, but he could not see anyone from his location.

Lt O'Bre indicated the Bearcat armored vehicle arrived, along with several additional SWAT team personnel. Lt O'Bre remained on the southwest corner of Gord's Pub, covering the rear door and west side of Eagle Nation Cycles. Lt O'Bre indicated the Bearcat armored vehicle extricated the individual who was down in the alley, but he could not see the extrication.

Lt O'Bre saw two hostages exit the rear door of Eagle Nation Cycles and walk around the southwest corner of the building before being secured by law enforcement. Lt O'Bre saw the shooter come out and finally saw another individual come out of the building.

NEPD Officer Kuffel

Officer Kuffel is the SWAT team leader for the NEPD. He was off-duty on Saturday, December 5, 2015, but was called in at approximately 9:11 a.m. Officer Kuffel was told that gunshots had been fired, and there was a hostage situation at Eagle Nation Cycles.

Officer Kuffel stated that he had been involved in the execution of a previous search warrant at Eagle Nation Cycles in September 2012, which was the subject of a lawsuit by Eagle Nation Cycles against the city of Neenah. Officer Kuffel said he was a part of the entry team for that search warrant, and he believed he took Michael Funk into custody on that day. Officer Kuffel said Funk had a loaded .45 caliber handgun on him. Officer Kuffel said he has also probably dealt with others affiliated with Eagle Nation Cycles during traffic stops while on patrol. Officer Kuffel stated that he had never heard of Brian Flatoff and had never had any previous contact with him.

Officer Kuffel stated that on his drive to NEPD on December 5, 2015, he called to have the NEPD SWAT team paged out to the incident. Officer Kuffel also requested the Winnebago County Bearcat armored vehicle and SWAT team, as well as the Appleton Police Department snipers and armored vehicle. He said it was a major incident, and he wanted to get everyone coming.

Officer Kuffel said he went to the NEPD and got geared up into his SWAT uniform. Officer Kuffel was listening to the radio, and he heard Lt O'Bre managing the scene and dispatching other officers to it. He heard a female voice, believed to be dispatch, state something to the effect of "if someone is not there in five minutes he will start killing people." Officer Kuffel did not know who that someone was, but he knew that the hostage taker was demanding that someone be at the location within five minutes.

Officer Kuffel arrived on scene and went to the area behind Gord's Pub, where Lt O'Bre and Officer Ross were already located. He asked Lt O'Bre how far they were into the five minute countdown, and Lt O'Bre told him "about five minutes." Officer Kuffel said they received a brief

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physical description of the suspect over the radio, that he had a beard and longer hair and was wearing a flannel shirt. Officer Kuffel also recalled hearing information about the suspect having a shotgun or a Mac 10 and that the suspect's name was Brian. Officer Kuffel said he heard over the radio that if someone was not there in one minute people were going to die.

Lt Thompson and Officer Hoffer arrived on scene, and Officer Kuffel started to stack the officers up because they had to do a "hasty entry" into the building, and they did not have much time. Officer Kuffel explained the term "Hasty Team" as an immediate reaction team for critical incidents. He said the SWAT team is trained for such a response in an active shooter-type situation. Officer Kuffel said the "Hasty Team" was Lt Thompson with a tactical shield as number one, Lt O'Bre, Officer Hoffer, Officer Kuffel and Officer Ross.

The "Hasty Team" approached the building and entered through the back door. Officer Kuffel said that Lt Thompson and Lt O'Bre were to his right. He said he looked into the business, and he saw bikes, toolboxes and a "den of stuff." Officer Kuffel stated he saw two people in the business for sure. Officer Kuffel recalled Lt Thompson saying something, such as "police," "hands," or "get down," but he does not know exactly what was said. Officer Kuffel said both he and Lt Thompson were giving commands and yelling.

Officer Kuffel stated that the two individuals he saw inside the building did not acknowledge the police presence, were not reacting to commands, and acted as though the police were not even there. Officer Kuffel said the two individuals split, and one individual went toward Officer Kuffel's left, and one individual with a beard and longer hair went toward Officer Kuffel's right. Officer Kuffel said he could only see the individuals from the chest up because there was equipment or something in front of them. Officer Kuffel said as the two individuals split, he thought they were flanking the officers. Officer Kuffel said it was as if the people inside the business were doing a room entry on the police, and it "was not right." Officer Kuffel said he believed it was an ambush or a "bait pile," and the individuals were just trying to get the officers inside. He explained that the term "bait pile" is a term used in SWAT training, when someone is baiting the officers in or is set up to take them out.

Officer Kuffel said then "all hell broke loose." Officer Kuffel heard gunshots being fired and felt the percussion on his face of rounds going off. He said it was either an automatic weapon or someone pulling the trigger as fast as they could. Officer Kuffel heard someone yell out "I'm hit." Officer Kuffel said Lt O'Bre and Lt Thompson were gone, and Officer Hoffer was on his back. There was still shooting from inside, and Officer Kuffel believed whoever was shooting was trying to kill the officers. Officer Kuffel said he used his .223 caliber AR-15 rifle and directed fire into the building to stop the ambush.

Officer Kuffel said he could feel the gunfire coming from the area where he had observed the individual that had moved to his right, so he directed his fire in that direction. Officer Kuffel said he hit something and it went "whoosh." He said it was as if a smoke bomb had gone off in the building, and he believed he hit a fire extinguisher. Officer Kuffel said everything went in slow motion as the fire extinguisher expelled. Officer Kuffel said at this point in the incident his

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memory goes black, and he does not have a good memory of it. Officer Kuffel recalled that he was low or on the ground and outside the building. He saw Officer Hoffer on his back, grabbing his head. Officer Kuffel said there were more gunshots fired from inside, and it felt as though those gunshots were right next to him, on the other side of the wall. He said he was afraid the people inside were coming back out after them, so he leaned back into the doorway and fired another two or three gunshots in the same direction. Lt O'Bre's head appeared from the stairway, and Officer Kuffel stopped firing.

Officer Kuffel then moved back to the area behind Gord's Pub. He said it was him, Lt Thompson and Lt O'Bre there. Officer Kuffel found out via the radio that Officer Ross was with Officer Hoffer at the other end of the alley. Officer Kuffel said he heard additional gunfire. Then he heard on the radio that a subject was down in the alley.

Officer Kuffel was advised by dispatch that two people were coming out the back door of the business, and he set up two arrest teams to take them into custody. Officer Kuffel saw the two individuals come out. Officer Kuffel took one of the individuals into custody and handcuffed him. Officer Kuffel said he asked one of the individuals who was shooting at them, and that individual told Officer Kuffel it was "Brian."

Officer Kuffel said the Winnebago County Bearcat armored vehicle had arrived, and officers discussed rescuing the individual that was down in the alley. Officer Kuffel said he radioed to Officer Hoffer that they would be using the Bearcat armored vehicle to go in and rescue the individual. A rescue team retrieved the individual from the alley and transferred him to the Gold Cross paramedics. Officer Kuffel said he and Lt O'Bre stayed behind Gord's Pub during the rescue. When Lt Thompson, who was part of the rescue team, came back, Lt Thompson told Officer Kuffel that the individual had a gun in his hand and his finger was on the trigger or in the trigger guard.

NEPD Sergeant Eichmann

Sgt Eichmann is a patrol sergeant on day shift. On December 5, 2015, at approximately 8:56 a.m., Sgt Eichmann was on patrol when she heard dispatch state there was a man with a gun inside Eagle Nation Cycles. Dispatch relayed information that gunshots had been fired and there were possible hostages and requested that all four units on duty respond to the location.

Sgt Eichmann drove to the back alley behind Eagle Nation Cycles, off Doty St. Dispatch relayed information that a white truck had just left the scene. Sgt Eichmann and Officer Ross stopped the truck at gun point and ordered the driver out of the vehicle. The driver followed the officers' commands and exited the truck. The driver was a juvenile witness who had just left Eagle Nation Cycles. The driver told officers that his dad was inside Eagle Nation Cycles, and there was an unknown white male with long hair and a gun inside the business. The juvenile driver was placed in the back of Sgt Eichmann's squad and later released.

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Sgt Eichmann and Officer Ross went to the intersection of the alley and Doty St, behind Vicky's Beauty Shop, and covered the back door of Eagle Nation Cycles. They were joined there by MPD Lt Hanchek and MPD Officer Berna. Sgt Eichmann stated there was a truck in front of the Eagle Nation Cycles rear door. Sgt Eichmann and the other officers stayed at their position at the corner of Vicky's Beauty Shop and waited for the Neenah SWAT team.

Sgt Eichmann heard over the radio that the person inside Eagle Nation Cycles was giving five minutes before he was going to start shooting people. Sgt Eichmann stated it had previously been confirmed there were at least two other people inside the business. Sgt Eichmann then heard over the radio that the shooter was giving one minute before he was going to start shooting.

After the one minute notification, Sgt Eichmann saw the SWAT team come around the west corner of Eagle Nation Cycles and enter the back door of the building. Sgt Eichmann heard the officers yelling "let me see your hands," and she heard gunshots being fired. Sgt Eichmann said it was more than one or two gunshots and seemed more like ten. Sgt Eichmann heard someone on the radio say "shots fired," but she does not know who said it.

Sgt Eichmann saw the SWAT team backing out, and she knew someone had been hit by gunfire. Sgt Eichmann saw an officer down outside the rear door of Eagle Nation Cycles, and she ran down the alley toward the officer. Officer Hoffer ran to Sgt Eichmann, and the two of them ran back to the east end of the alley where Sgt Eichmann had been holding perimeter outside Vicky's Beauty Shop. Officer Hoffer told Sgt Eichmann that he was shot in his helmet, but he was okay.

The officers now positioned at the east end of the alley were Sgt Eichmann, MPD Lt Hanchek, MPD Officer Berna and Officer Ross. Sgt Eichmann observed an individual with long hair come out the back door of Eagle Nation Cycles. Sgt Eichmann saw the individual walk around the truck that was in the alley and look toward the back door of Eagle Nation Cycles. Sgt Eichmann did not know who this individual was or what this individual was doing. Sgt Eichmann heard someone, unknown who, giving directions to the individual in the alley, but she did not know what was said. Sgt Eichmann heard gunshots coming from the direction where the individual was standing.

Sgt Eichmann said Officer Ross had a rifle, and he shot at the individual in the alley. Officer Ross was not the only officer who fired, but Sgt Eichmann did not know who else fired their weapon.

Sgt Eichmann said the individual must have turned to face the officers because of the direction he fell. Sgt Eichmann said the individual's head was facing toward them, and he fell on his stomach. The individual did not move after he fell. Sgt Eichmann radioed "shots fired" and "suspect down."

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Sgt Eichmann saw a second individual come out of the business. He was given commands, and he did everything he was ordered to do. Sgt Eichmann handcuffed and searched this individual and put him in her squad car.

Sgt Eichmann observed the Bearcat armored vehicle back into the alley from the west. She saw SWAT officers get out of the vehicle and approach the individual that was down in the alley. One of the SWAT officers reached down and picked up a small, silver handgun, and put it down against the side of the building. Sgt Eichmann said this was the first she saw a gun related to this individual. SWAT officers picked up the individual from the alley and put him in the Bearcat armored vehicle.

MPD Lieutenant Hanchek

MPD Lt Hanchek wrote a report regarding her actions and observations on scene during the hostage situation, and the following is a summary of information taken from that report. (It should be noted that Lt Hanchek referred to NEPD Sgt Eichmann by her former name, Sgt Woldt, in her report.)

On Saturday, December 5, 2015, at 8:58 a.m., the NEPD was responding to a weapons complaint at Eagle Nation Cycles. The NEPD requested MPD's assistance for a report of a male subject inside the business with a gun. Lt Hanchek learned through dispatch that there were shots fired and hostages inside.

Lt Hanchek assisted NEPD Sgt Woldt and MPD Officer Berna with maintaining a perimeter on the east end of the alley behind Eagle Nation Cycles, near Vicky's Beauty Shop. Lt Hanchek said she was able to see the rear door of Eagle Nation Cycles, and she observed a blue truck parked behind the business.

Lt Hanchek observed an entry team approach the rear door of Eagle Nation Cycles. As soon as the officers made entry, Lt Hanchek heard gunshots. The team quickly exited, and Lt Hanchek observed two team members, NEPD Officers Hoffer and Ross, run up the alley toward her location. Officer Hoffer, who had been struck by a round, was checked on by Sgt Woldt.

Officers Hoffer and Ross took over Lt Hanchek's position behind Officer Berna at the corner of Vicky's Beauty Shop, and Lt Hanchek no longer had a view of the rear door of Eagle Nation Cycles. Lt Hanchek heard gunshots coming from behind the business. Lt Hanchek then heard additional gunshots from the NEPD officers next to her.

MPD Officer Berna

MPD Officer Berna wrote a report regarding his actions and observations on scene during the hostage situation, and the following is a summary of information taken from that report. (It

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should be noted that Officer Berna referred to NEPD Sgt Eichmann by her former name, Sgt Woldt, in his report.)

On December 5, 2015, at 8:59 a.m., Officer Berna was dispatched to Eagle Nation Cycles in Neenah for a report of a man with a gun inside that location. NEPD officers advised over the radio that it was a possible hostage situation and requested officers set up an outer perimeter. Officer Berna went to the eastern side of Vicky's Beauty Shop, where he met with MPD Lt Hanchek and NEPD Sgt Woldt and took up a perimeter position, monitoring the back door of Eagle Nation Cycles. Officer Berna was provided with a ballistic shield, which he positioned on the northeast corner of Vicky's Beauty Shop to provide cover.

Officer Berna observed a group of NEPD officers assemble on the southwest side of Eagle Nation Cycles. They entered through the back door of Eagle Nation Cycles, and almost immediately Officer Berna heard gunfire. He said he heard several gunshots being fired, which sounded like multiple different calibers of bullets. Officer Berna heard one NEPD officer, whom he later learned was Officer Hoffer, yell, "I'm hit." Officer Berna observed Officer Hoffer fall backward out the doorway and onto the ground. Officer Berna also observed the other NEPD officers quickly exit the building, walking backward, while gunshots were still being fired.

Sgt Woldt assisted Officer Hoffer back to their position at the east end of the alley. Officer Hoffer stated that he had been shot in the helmet and asked if the round had gone through his helmet. Officer Hoffer and Officer Ross then took up positions behind Officer Berna, as Officer Berna continued covering the back door of Eagle Nation Cycles. Officer Berna was in a kneeling position behind the shield, and Officer Hoffer was positioned over his right shoulder. Officer Ross was behind and to the right of Officer Hoffer.

Officer Berna observed a man exit the back door of Eagle Nation Cycles, facing northwest, away from Officer Berna. Officer Berna heard several gunshots from the man's general direction. The man appeared to be holding something in his hands, and both of his shoulders were rolled forward. The man's hands remained together in front of his body, as if he was in a shooter's stance. The man had longer hair, was large in stature, and was wearing a black and yellow vest. The man positioned himself behind the blue truck in the alley, still facing northwest. The man's hands were still together in front of his body, and he placed his hands on the back of the truck. The man appeared to be holding something, and he looked like he was trying to take a position of cover behind the truck. The man then started to sidestep across the alley toward the fence on the west side of Vicky's Beauty Shop. The man continued to point his hands toward the area just west of Eagle Nation Cycles.

The man's body turned enough that Officer Berna could see a silver handgun in his hands. Officer Berna heard another officer from behind him give a command something to the effect of, "Police, show me your hands" or "Police, drop the gun." Officer Berna then observed the man, who was about halfway across the alleyway, turn to face the officers' position. The man began to raise his arms, which were still holding the gun. The man was pointing the gun directly at Officer

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Berna's position, and Officer Berna feared for his safety. Officer Berna heard officers behind him begin to fire at the man. Officer Berna heard approximately four gunshots come from the rifle next to his head, and then his ears started to ring loudly and other sounds became somewhat muffled. Officer Berna saw the man fall to the ground and land face down with his head closest to Officer Berna and his feet away from Officer Berna. The man's head was moving slightly, and Officer Berna heard an officer yell, "Stay Down, Don't Move!"

Officers, unknown who, discussed approaching the man to provide medical aid, but they decided an approach would be too dangerous because the man was out in the open and the building had not been cleared. Officer Berna remained in his position, and the CAIMEN armored vehicle moved into the alleyway, directly to Officer Berna's right. Officer Berna saw a second man exit the back door of Eagle Nation Cycles, carrying a water bottle. Officer Ross ordered the man to drop the water bottle, raise his hands above his head, and walk to Officer Ross' position. The man complied with all officer commands. Sgt Woldt placed the man into handcuffs and moved him to her squad car.

Officer Berna moved into the back of the CAIMEN armored vehicle. Officer Berna heard two gunshots come from inside Eagle Nation Cycles. He said the gunshots sounded as if they were fired near the back door of the building. Officer Berna observed the suspect exit the back door of Eagle Nation Cycles with both hands raised above his head. The suspect walked toward an arrest team that was positioned on the northwest side of the building. Officer Berna saw another man exit the building, who appeared to be talking on a cell phone with one hand and had his other hand raised above his head. That man also met with an arrest team on the northwest side of the building.

NEPD Officer Hoffer

Officer Hoffer is a member of the NEPD SWAT team, and is currently the SWAT assistant team leader. Officer Hoffer was off-duty on December 5, 2015, and he learned of the incident at Eagle Nation Cycles from Officer Ross, who called him at 9:13 a.m. Officer Ross asked Officer Hoffer if he was coming in for a hostage situation at Eagle Nation Cycles in which there was one hostage taker and an unknown number of hostages.

Officer Hoffer stated that when he was with the Lake Winnebago Area Metro Enforcement Group (LWAM) in 2012, he wrote a search warrant for Eagle Nation Cycles and was there for its execution. Officer Hoffer recalled that Michael Funk was present during this search warrant, and the police took a .45 caliber Kimber handgun from Funk. Officer Hoffer said that the NEPD is being sued as a result of this search warrant, but he is not named in the lawsuit, nor is LWAM.

Officer Hoffer said that within the last three months, he handled a criminal damage complaint at Eagle Nation Cycles after someone shot out the front window to the shop. Officer Hoffer met with Funk about this complaint and worked with him to obtain surveillance video. Officer Hoffer said that he could see that Funk was carrying a sidearm when he worked with him because he

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could see the outline of it on Funk's clothing. Officer Hoffer said he could not recall any prior interaction with Brian Flatoff.

Officer Hoffer said that as he was nearing the NEPD on December 5, 2015, he spoke to Officer Kuffel on the phone, and Officer Kuffel told him to gear up quickly because the hostage taker had started a countdown.

Officer Hoffer said that he and Lt Thompson went to the scene together, with Lt Thompson having a shield. Officer Hoffer said he and Lt Thompson ran to Officer Kuffel's position behind Gord's Pub, where Officer Kuffel was with Lt O'Bre and Officer Ross. Almost immediately upon Officer Hoffer's arrival, Officer Kuffel said that the hostage taker provided a one minute countdown. Officer Kuffel said they had to make entry, and he lined the officers up. Lt Thomson was first, holding the shield, and then Lt O'Bre, Officer Hoffer, Officer Kuffel and Officer Ross.

Officer Hoffer said they approached the Eagle Nation Cycles back corner door closest to Gord's Pub. Officer Hoffer said that Lt Thompson and Lt O'Bre entered, and then he entered the building at approximately the same time as Officer Kuffel, with Officer Ross behind them. Officer Hoffer said he penetrated the back door and was scanning the environment. Officer Hoffer said it was a mess in there, with motorcycles everywhere. Officer Hoffer said it did not look like a hostage situation to him. He said there were three to four people inside, but they were all spread out, with gaps of space between them. Officer Hoffer saw someone near the desk. Officer Hoffer could not see anyone's hands.

Officer Hoffer said it seemed very quiet in the shop, and he did not recall hearing anybody within the shop say anything. Officer Hoffer said there was nothing he noticed inside the shop that would indicate to him that anybody was in distress; nobody looked like they were in distress and nobody said anything to indicate distress. Officer Hoffer said it was like those within the shop were taking up ambush positions.

Officer Hoffer said he was barely inside the door when someone started shooting, and he felt an impact against his helmet. Officer Hoffer said he experienced a flash of light and a second of blurriness in his right eye. Officer Hoffer said he was able to get himself out the back door and recalls inwardly cursing with the realization that he was just shot in the head. Officer Hoffer said he then realized that being aware of being shot in the head was a good thing because it meant he was still alive. Officer Hoffer said he recalled wondering if his extremities still worked and if the shot penetrated his helmet. Officer Hoffer said he recalled yelling "I'm hit" when getting out of the shop.

Officer Hoffer remembered calling out "shots fired" and "officer hit" on the radio. Officer Hoffer saw that Officer Kuffel was returning fire from the outside corner of the door, with limited penetration into the shop. Officer Hoffer said he heard Officer Kuffel's rifle. Officer Hoffer told Officer Kuffel that he was good, meaning not critically wounded, and then he got up and ran alongside the truck that was in the alley. Officer Hoffer said Sgt Eichmann grabbed him and led

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him to the alley corner of Vicky's Beauty Shop, where MPD Lt Hanchek and MPD Officer Berna were located.

Officer Hoffer said he did not lose consciousness, and while the injury to his head hurt, it was not excruciating. Officer Hoffer said others were checking him out for other injuries and encouraging him to go get checked out, but Officer Hoffer said he was fine and decided to stay on scene because there weren't enough tactical personnel there yet.

Officer Hoffer said that Officer Kuffel checked on his welfare via the encrypted SWAT radio channel. Officer Hoffer said that he and Officer Kuffel agreed that their observations upon entry into the shop indicated a set-up versus a hostage situation. Officer Hoffer said he thought it was a set-up because those within the shop were too spread out, and nobody looked like they were in distress when the police made entry for rescue.

Officer Hoffer said that MPD Officer Berna was at the alley corner of Vicky's Beauty Shop with a shield. Officer Hoffer said he was on the Doty St side of Vicky's Beauty Shop when he heard gunshots coming from the alley. Officer Hoffer said he moved from the Doty St side of Vicky's Beauty Shop toward the alley corner of Vicky's Beauty Shop. Officer Hoffer said that someone, unknown who, said someone was coming out of Eagle Nation Cycles. Officer Hoffer said he moved to the right of MPD Officer Berna, standing in a crouched position. Officer Hoffer said he first saw a male wearing an Eagle Nation Cycles shirt by the rear alley-side wheel of the truck. Officer Hoffer said he could see the male's back. Officer Hoffer said it looked like the male was scanning for another target, in the direction of Gord's Pub, where the other entry team officers had gone. Officer Hoffer said the male backed up to the corner of the truck. The male's right hand came down, and Officer Hoffer could see a silver handgun in his hand. Officer Hoffer observed the male turn in a counter-clockwise manner toward Officer Hoffer's and others' position at the alley corner of Vicky's Beauty Shop.

Officer Hoffer said that he thought that if this male sees the shield with the word "Police" on it, he will start firing at them. Officer Hoffer explained that the male had a weapon, he believed the situation was a set-up, they had just been fired at, and he knew that action beats reaction, and therefore, this individual posed a threat to himself and the officers around him. Officer Hoffer said he started shooting as the male was turning toward them. Officer Hoffer said he was shooting to stop the threat so the male did not shoot him and others. Officer Hoffer said he could feel that someone else to his right side was shooting a rifle. Officer Hoffer said that he felt like he stopped shooting as the male was going down and he no longer perceived the male as a threat.

Officer Hoffer said he yelled to the male to show his hands. Officer Hoffer said he thought he yelled this to the male before shooting, but he realized after watching video footage from Officer Ross' body camera that he yelled after the male was on the ground. Officer Hoffer said he saw some small movement and shudders from the male, then no more movement. Officer Hoffer said he could see a gun with the barrel pointed at him and others by the male's right hand. Officer Hoffer said someone, unknown who, suggested moving to the male to get him, but Officer Hoffer said no because he believed this incident was a set-up against the police, and because the location

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where the male went down in the alley would expose officers to the back doors of Eagle Nation Cycles. Officer Hoffer said he believed that this male was the suspect, and the priority for protection of human life in this situation was hostages, civilians, police, and suspects.

Officer Hoffer said it was decided to get a rescue team to the male in the alley by utilizing the Bearcat armored vehicle. Officer Hoffer said that the male was retrieved and transferred to the Gold Cross ambulance staged nearby. Officer Hoffer said he assisted in this operation by covering one of the back doors to Eagle Nation Cycles from the passenger side, door platform area of the CAIMEN armored vehicle, while Officer Ross covered the other back door from the rear outside corner of the CAIMEN armored vehicle.

Officer Hoffer was checked out by the Gold Cross ambulance crew staged nearby. Officer Hoffer said they assessed him and checked his eyes. Officer Hoffer said that he was cleared and was provided an ice-pack. Officer Hoffer went back out to the scene to help since more police personnel were still needed for the perimeter. Officer Hoffer said that while being out on the perimeter over time, his eye was becoming too swollen for him to be effective. Officer Hoffer briefed the Appleton Police Department SWAT team, told Officer Kuffel of his condition and status, and then went to Theda Clark Hospital.

NEPD Officer Ross

Officer Ross is a night shift patrol officer and member of the NEPD SWAT team. On Saturday, December 5, 2015, he was moved to work the day shift. Officer Ross was on patrol, near the NEPD, when he was dispatched to a weapons call at Eagle Nation Cycles. Officer Ross said he stopped about two blocks away from the location and removed his AR-15 .223 caliber rifle from its bag in the passenger seat and put on a plate carrier that says "Police" on it. He then continued on to Eagle Nation Cycles.

Officer Ross parked by the front of Vicky's Beauty Shop. Officer Ross said he was made aware of a white pick-up truck leaving the area of Eagle Nation Cycles, and he ran to intercept that vehicle. Officer Ross held his hand up to signal the driver of the truck to stop, and the driver did so. Officer Ross said he ordered the driver out and to the ground. Officer Ross said the driver of the truck was cooperative, and he was taken into custody and turned over to another officer.

Lt O'Bre radioed to Officer Ross to meet him behind Gord's Pub to be part of the "Hasty Team." Officer Ross said that in general, a "Hasty Team" is a group of officers, preferably SWAT members, assembled as quickly as possible to enter a worst-case scenario event to prevent loss of life, in this case by a hostage taker. Officer Ross said Lt O'Bre told him that there was a hostage inside and that the hostage taker had said if "he" is not here in 5 minutes, the hostage taker will start killing hostages. Officer Ross said there was a baseline description of the hostage taker provided; it was beard, long hair, and flannel.

Officer Kuffel arrived on scene and joined Officer Ross and Lt O'Bre. Officer Ross said information came over the radio that the hostage taker had now said that if "he" did not get to the

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shop in one minute, the hostage taker would start shooting. Upon hearing this information, Officer Kuffel said that the "Hasty Team" had to make entry for the hostages, and Officer Kuffel gave them the entry order as Lt Thompson with the shield, Lt O'Bre, Officer Hoffer, Officer Kuffel, and Officer Ross.

Officer Ross said they approached the back door of Eagle Nation Cycles, closest to Gord's Pub, on the alley. Officer Ross said that Lt Thompson and Lt O'Bre entered through the door with the shield first, and Lt Thompson yelled "Police!" Officer Ross said that Lt Thompson and Lt O'Bre fell down almost immediately. Officer Ross said that Officer Kuffel and Officer Hoffer then entered, almost at the same time. Officer Ross said that someone in the shop started firing at them. Officer Ross heard someone say "officer hit" or "I'm hit," and he saw Officer Hoffer fall down in front of him.

Officer Ross said there was an exchange of gunfire. Officer Ross said he recalled seeing a male inside the shop by the back corner after the Hasty Team opened the door to enter. Officer Ross said this male looked relaxed, like he was "chilling." Officer Ross said this male had a long ponytail and something red either on him or near him. Officer Ross said this male's demeanor struck him as "odd." Officer Ross said he lost track of this male once the Hasty Team started taking fire.

Officer Ross said he was providing cover at the door and ready to go in, but never made it inside the shop. Officer Ross said that Officer Kuffel yelled to the inside of the shop, "Let me know if you're in there." Officer Ross said the response was more gunfire from inside the shop. Officer Ross said his perception at this time was that they had been ambushed. Officer Ross said he thought it was an ambush because the male he saw inside the shop was relaxed, and because the "Hasty Team" immediately started taking gunfire upon entering the shop.

Officer Ross moved behind a truck parked in the alley and continued to maintain cover on the back door of Eagle Nation Cycles. Once Officer Hoffer retreated down the alley and got around the corner of Vicky's Beauty Shop and the other "Hasty Team" officers moved toward Gord's Pub, Officer Ross also retreated and ran to the corner of Vicky's Beauty Shop.

Officer Ross said he was on the Doty St side of Vicky's Beauty Shop when he heard gunfire. Officer Ross said he saw Officer Hoffer move to the alley corner of Vicky's Beauty Shop, facing the back side of Eagle Nation Cycles. Officer Ross said he moved to a position to the right of Officer Hoffer. Officer Ross said he recalled feeling like he was in an exposed position in the middle of the alley.

Officer Ross said he saw a male behind a truck, facing the back door of Eagle Nation Cycles and looking in the direction where some of the "Hasty Team" members had retreated. Officer Ross said this man was holding a gun, bouncing around, and facing away from his, Officer Hoffer's, and other officers' position by the alley corner of Vicky's Beauty Shop. Officer Ross said this male was holding the gun downward in his hand, and Officer Ross said he thought this male was looking for targets down the alley in the direction the other "Hasty Team" members ran.

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Officer Ross said this male then turned toward Officer Ross' position. Officer Ross said he thought that this male was the male who had just been shooting at them during their entry attempt into Eagle Nation Cycles. Officer Ross said this male had a ponytail, was looking toward where some of the Hasty Team members just ran, and that he believed that this male had just tried to kill him and others upon entry. Officer Ross said he considered this male an "absolute threat" that could easily turn his weapon on Officer Ross and others at the corner, as well as the civilians in the area, to include those behind their position and those within Vicky's Beauty Shop. Officer Ross said he thought there was a great chance that this male could kill him and others.

Officer Ross said he heard a gunshot as the male turned toward Officer Ross' position with other officers at the corner. Officer Ross said he thought it was this male starting to shoot, and Officer Ross then began firing at the male. Officer Ross said the male went down to the ground. Officer Ross said he thought the male was still moving on the ground, trying to get up, and Officer Ross recalled that his final two gunshots struck the male as he was moving on the ground. Officer Ross said that he then covered the door to Eagle Nation Cycles, while Officer Hoffer covered the male and gave him commands to not move.

Officer Ross said another male came out of the back of Eagle Nation Cycles with a water bottle in his hand. Officer Ross said he told the male to drop the bottle and move toward Vicky's Beauty Shop. Officer Ross said this second male was ordered to kneel, and Sgt Eichmann placed handcuffs on him, told him he was doing well, and patted him down.

Officer Ross recalled that the CAIMEN armored vehicle arrived on scene. A decision was made to have the Bearcat armored vehicle come in to retrieve the male who was down in the alley. Officer Ross said he was positioned at the back passenger corner of the CAIMEN armored vehicle, covering on the back door of Eagle Nation Cycles where the "Hasty Team" had entered.

Wisconsin State Crime Laboratory (WSCL) Forensic Analysis

On December 22, 2015, a total of 110 ballistic evidence items were transported to the WSCL and submitted for forensic analysis. Those items included four firearms, spent cartridge cases, fired bullets and bullet fragments. The results of the forensic analysis are pending.

Family Notification and Contacts

On December 5, 2015, special agents met with Funk's wife and other family members and friends in a soft interview room at the NEPD. Funk's wife was provided victim-witness information and the DOJ 5-page OID informational packet. Special agents have met with and had telephone contact with Funk's wife on several occasions since then.

Attorney General Review

On Thursday, January 14, 2016, a copy of DCI's complete investigative case file, as of that date, was turned over to Assistant Attorney General Shelly Rusch for her review. A few additional

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reports have been provided to AAG Rusch since then. DCI will continue to document any additional investigative activities that may occur. Reports of those investigative activities will be provided to AAG Rusch as soon as they are completed.