

Thursday, May 22, 1997 (afternoon)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TIMOTHY JAMES McVEIGH,

Defendant.

REPORTER'S TRANSCRIPT

(Trial to Jury - Volume 109)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 1:32 p.m., on the 22d day of May, 1997,
in Courtroom C-204, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription

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APPEARANCES

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PROCEEDINGS

(Reconvened at 1:32 p.m.)

THE COURT: Please be seated.

(Jury in at 1:32 p.m.)

THE COURT: Your next witness, please, Mr. Jones.

MR. JONES: Dr. T. K. Marshall.

THE COURT: Come over, please.

(Thomas Marshall affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and
spell your last name.

THE WITNESS: Thomas Kenneth Marshall,

M-A-R-S-H-A-L-L.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Jones.

DIRECT EXAMINATION

BY MR. JONES:

Q. Dr. Marshall, where were you born and when?

A. I was born in Bradford, North Yorkshire, in the north of England on the 28th of March, 1924.

Q. Would you tell the jury, please, your educational history beginning with university.

A. I went to the University of Leeds in 1942 to study medicine, and I emerged in 1948 with my basic medical degree, an M.B.C.H.B., which means bachelor of medicine, bachelor of surgery; and in the United Kingdom, that is the basic degree which I understand is equivalent to the M.D. in the United States.

Q. And then did you subsequently receive an advanced degree?

A. Yes.

Q. What was that?

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A. In 1959, I received an M.D. which with us is a superior degree to the basic one. And I got that after a period -- a number of years' research and the publication of a thesis.

Q. What was the title of the thesis?

A. The title was "The Cooling of the Body After Death."

Q. Are you presently or have you in the past held any board certifications?

CERTIFICATIONS:

A. Yes.

Q. Would you tell us what those are, please.

A. I became a member of the Royal College of Pathologists in 1964. That is, I would say, equivalent to your board certification. And then in 1970, I became a fellow of the Royal College, which is the highest grade in the college.

Q. And have you received any honors from Her Majesty, the Queen?

A. I have.

Q. And what are those?

A. I was made a commander of the Order of the British Empire, CBE.

Q. And I know that Great Britain has an honor system. Where is the CBE in, say, reference to a knight?

A. It's the one below a knighthood.

Q. Now, what professional organizations are you presently a member of?

A. I'm a member of the British Association -- or a fellow of

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the British Association in Forensic Medicine. I have been a member of other organizations, but I relinquished these when I retired from my government post of State Pathologist in 1989.

Q. During the period of time that you were a member of these organizations, did you hold any elected positions; and if so, which ones?

A. Yes. The three important ones, first, I'm a past president of the International Association of Forensic Sciences, which is the premier English-speaking organization of forensic doctors and scientists. We hold meetings every three years, and one becomes president for three years. I was president in -- from 1969 to 1972.

I'm also a past president of the British Association in Forensic Medicine, which is our premier organization in the United Kingdom of those people practicing forensic pathology. And I'm a past president of the Northern Ireland Medical/Legal Society. I was, in fact, the third president and succeeded the second president, Lord Lowry, who was the Lord Chief Justice of Northern Ireland.

Q. During your work -- and it's not necessary to name the countries -- but have you lectured both in the United Kingdom and abroad on the subject of forensic pathology?

A. Many times.

Q. And does that include the United States?

A. It does.

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Q. Does it include lectures with the Federal Bureau of Investigation?

A. Yes.

Q. Have you also served as an external examiner in various universities in England and Northern Ireland?

A. I have.

Q. During your professional career, Dr. Marshall, did you publish any articles in the area of your specialty?

A. I published over 50 articles or book chapters in forensic pathology.

Q. And do you have an estimate of what percent of the approximately 50 articles were in the area of explosive injuries?

A. About 15 percent.

Q. And have any of these publications involved specifically the investigation of injuries from bomb devices?

A. They have.

Q. And could you tell me one or two of those articles.

A. I published an article entitled "Deaths from Explosive Devices" in 1976. I have a chapter in a prestigious three-volume American textbook entitled Explosion Injuries. I have a chapter in a United Kingdom book called The Pathology of=20

Trauma. My chapter is in violence of -- violence of civil disturbance. I have a chapter in the legal man -- Legal=20 Medicine annual of 1978, which is a United States publication,

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on the investigation of bombings. I have an article entitled "Forensic Aspects of Terrorism" in the annals of the Academy of Medicine in Singapore. That was 1984. I gave the Fernando

Manuel Lecture in Civil Law, that is, I gave the lecture on the

Memorial Oration in Sri Lanka -- that is now -- what was the old Ceylon -- entitled "The Pathologist's View of Terrorist Violence," and that was subsequently published in a journal, I think emanating from the United States. And I've published an article called "A Pathologist's Experience of Terrorist Violence" in the British Medical/Legal Journal.

Q. In 1958 or thereabouts, did you become the State Pathologist for Northern Ireland?

A. I did.

Q. And just take a moment, please, and tell us what part of the United Kingdom is Northern Ireland.

A. The United Kingdom consists of England, Scotland, Wales, and Northern Ireland.

Q. Dr. Marshall, if you will -- when you turn, sometimes the microphone doesn't pick you up, so if you would just look towards me, then the microphone -- it's important for the court reporter.

I'm sorry. The United Kingdom is composed of Northern Ireland --

A. These four entities.

Q. All right.

A. England, Scotland and Wales is Great Britain. And Northern

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Ireland is across a strip of water in the north part of the island -- island of Ireland. And when you join Northern Ireland onto Great Britain, we call it the United Kingdom.

Ireland once great Britain, we call it the United Kingdom.

Q. Dr. Marshall, beginning in 1922, there was a series of civil violence in Ireland, was there not?

A. There was. Ireland was partitioned into Northern Ireland and the rest, which was called then the Irish Free State.

Q. And since that time, has this political violence involved shooting and explosives and bombs?

A. It's been quiescent for years at a time but has had occasional peaks. But then it erupted in 1969, and we've endured it ever since in Northern Ireland.

Q. And in one sentence, is that a conflict between the Provisional IRA and the Protestants?

A. Between the Provisional IRA and the British Government and its forces.

Q. And is there a term applied to that in Northern Ireland?

A. We call it "the troubles." It's an Irish term.

Q. Dr. Marshall, the use of explosive devices in Northern Ireland during the period of time that you were Chief State Pathologist, did it include ammonium nitrate fuel oil bombs?

A. Some bombs were made of ammonium nitrate and fuel oil. ANFOs, we call it.

Q. During the period of time that you were Chief State Pathologist, can you give the jury some numerical indication of

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the number of victims of terrorist attack that you autopsied.

A. When I retired, the number of total victims was more than

2,000 deaths from shooting and about 800 or 850 deaths from bombing. And although I don't have accurate figures, I would think I autopsied 200 of the bombing cases.

Q. During the period of time that you were State Pathologist for Northern Ireland, were you involved in the investigation of a number of terrorist bombings at the scenes?

A. No. We rarely went to the scene. The bodies were brought to us at the mortuary.

Q. And where was the mortuary?

A. The mortuary was in Belfast principally, but we had subsidiary mortuaries scattered throughout Northern Ireland, and bodies would be taken to the nearest one.

Q. And these bombing attacks, would they take place in just one type of facility or did they cover a number of type of facilities?

A. I'm sorry. I don't understand your --

Q. Let me put it another way. Did these bombings occur against the police?

A. Yes. I understand. Some bombings were against individuals; others were against groups.

Q. Were some bombings of buildings?

A. Some bombings were of buildings, indiscriminate bombings. We had booby-trapped cars, bombings of public houses, bombings

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of government facilities, and so forth.

Q. Dr. Marshall -- and I'm not sure that I'm asking the question precisely, but I will try -- what is the largest number of deceased persons from a specific bombing that you have investigated?

A. My department has investigated bombings where the number of victims were around 25.

Q. And are you the chief supervisor of your department?

A. Yes. We normally share the work; and in a large -- if there's a large number of victims, we may take a few victims each.

Q. Would you please describe in a general way the type of injuries that one might receive from a terrorist bombing.

A. Well, from experience, I found that terrorist bombs produced effects which could be categorized, and the first of these is complete disruption. The body is literally blown to bits, and the parts can be distributed over an area of 200 yards radius. However, that only happens when people are very near to the explosion.

And most people aren't that near, and they then are what I call mangled. Parts of the body can be severely lacerated and limbs can be blown off, but there is a body on which one can perform an autopsy.

The third effect is when people are in a building and it -- and they are killed by the collapsing structures, as

occurs in the case in question. And then they suffer lacerations, bruises, abrasions of a nonspecific kind such as the pathologist might find in, say, a road accident.

The fourth effect is what I have called -- and have published work on this -- flying missile injury, and this is where a fragment of something is hurled away and travels a considerable distance, perhaps, and strikes an individual and can cause death; and that could happen 100 yards from the seat of the explosion.

The fifth effect is burns. Now, to get burns from the bomb, itself, you've got to be very near the explosion. Most people who are burned are burned because the bomb has set alight to some structure with which they are involved.

And the sixth effect of the bomb is the effect of blast. Now, most people have heard of blast, and it was very prominent during the last war when people were caught in ships and in underground shelters when a bomb exploded or torpedo. But to be injured by blast from a terrorist bomb, you have to be pretty near to it, and then you're going to have a lot of other effects of the bomb which are going to kill you; and so blast, itself, assumes really less or more theoretical importance. However, we have found in investigating that there are some victims who have insufficient injury to account for death, and we have then to invoke some effect of blast; and I believe in this case, there were some victims who were

subjected to a full autopsy and the Medical Examiner pronounced death due to traumatic shock, which I think in my book would be equivalent to a blast effect.

Q. Dr. Marshall, I wanted to ask you one other series of questions before moving directly to the specific facts of this case. During the time that you've been Chief State Pathologist in Northern Ireland, did you study the severity of injuries from bombs?

A. I saw many severe injuries from bombs.

Q. Did you study the distribution of injuries?

A. Yes.

Q. The pattern of injuries?

A. The pattern.

Q. And facts that would lead to a determination of the position of the victim in relation to the bomb?

A. Yes. With the bombs that we have had most in Northern Ireland, the pattern of injury, the distribution of injury on the body can often tell you the relative position of the victim to the seat of the explosion; and that can have -- give important information to the investigators.

Q. Have you also studied injuries or deaths where a terrorist device or a bomb prematurely detonated?

A. Yes. We've had a number of those. These bombs are homemade, and they do go off prematurely at times.

Q. And does that include ANFO bombs?

Thomas Marshall - Direct

A. Yes. ANFO bombs.

Q. And are there recorded cases of terrorists in Northern Ireland being killed by an ANFO bomb prematurely detonated?

A. I'm sure there are reported in the -- in the press.

Q. Dr. Marshall, at my request, did you agree to assist us in studying and evaluating the reports and material furnished to us by the Chief State Medical Examiner for Oklahoma, Dr. Fred Jordan?

A. I did.

Q. And were photographs of the deceased hand-carried from the United States to your office in Northern Ireland by two couriers from our office?

A. I received a full set of Medical Examiner reports and the accompanying photographs.

Q. And did you study --

A. Less a few cases which I never received.

Q. And did you study and review those documents?

A. I did.

Q. First, Dr. Marshall, did I ask you to determine from the medical examiner's evidence whether you formed an opinion as to whether one bomb had been detonated or two or more than one?

A. You did.

Q. And what was your conclusion?

A. I concluded there was no evidence to show a second bomb.

Q. So your conclusion, then, is that one bomb caused these

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deaths?

A. Yeah.

Q. Dr. Marshall, did I also ask you to review the professionalism, competency, and completeness of the operation and work of the Oklahoma Medical Examiner's office in this case?

A. You did.

Q. And what was your conclusion or opinion?

A. I concluded that the work was of the highest quality; that the -- the way the investigations -- the medical investigations had been organized was sound and that the documentation on the bodies was very good, indeed.

Q. And based on your review of the Oklahoma Medical Examiner's reports and the photographs of the victims, did you form an opinion concerning the recovery of the bodies and the body parts?

A. Yes.

Q. And what was that opinion?

A. Well, I realized that there were more bodies than nearly anyone had dealt with; that the recovery must have been very difficult, indeed, but it had been carried out very well.

Q. Dr. Marshall, in your examination of the files of the Medical Examiner's office and from listening to the testimony of Dr. Jordan yesterday and today, you are familiar with what has been called P71?

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A. Yes, I am.

Q. And you are familiar with the history of P54 and the case that Dr. Marshall -- I mean that Dr. Jordan referred to in my direct examination of him today?

A. Yes. The information was all in the material that I was sent.

Q. Based on your review of the forensic medical evidence in this case which you have reviewed, have you drawn a conclusion concerning P71?

A. I have.

Q. And what is that conclusion?

A. The conclusion is that this is an extra left leg.

Q. Which the ultimate result of that is what?

A. The -- until shown otherwise, this must be an extra victim.

Q. 169th victim?

A. 169th victim.

Q. Do you have an opinion concerning the proximity of the 169th victim to the bomb truck?

A. It falls into the category of finding a portion of the body and nothing else that is identifiable.

Q. What is the significance of that to you?

A. To be disintegrated so completely, you have to be near the bomb.

Q. Is it possible -- knowing the evidence in this case

concerning the type of bomb and the weight of it, is it

Thomas Marshall - Direct

possible in your opinion under those circumstances for a body to be completely disintegrated; that is, nothing found of it or at least nothing large enough to be found?

A. It certainly is. It's a maxim in this work that you always have the minimum number of bodies. You really can't state the maximum number because some can be completely disintegrated.

Q. Is there a circumstance known to you in which a body would be disintegrated but yet a portion of the body be found?

A. Yes.

Q. How might that happen?

A. It's the vagarism of explosions. Explosions can do funny things. You can have two people side by side and one can be disintegrated and killed and the other person only injured. And we have found from experience that you can disintegrate a body and yet if you search hard enough, find one portion of it.

Q. What would happen if a person were standing close to the bomb site but a portion of the body was shielded in some way?

A. Well, this is one way in which a part of the body could remain intact and the rest of the body disappear.

Q. Can you give an example of that?

A. Well, there's a case I -- I've published that -- where a bomb went off as a terrorist carried it into a shed, and eight people were killed and others were injured. And as we were

doing the eighth autopsy, our attention was drawn to some parts of body -- unidentifiable parts, little bits of muscle and skin

Thomas Marshall - Direct

which had been collected into a -- a bag. And at the end of the eight autopsies, I started to examine this, and most of it was quite unidentifiable apart from saying this is a strip of skin and that's a bit of muscle. But in and amongst this, I eventually came across a penis, and none of the eight bodies had lost a penis and neither had any of the injured; and the only conclusion was that that was a ninth victim. And the only conclusion was that he was carrying -- touching the bomb when it went off to be so badly disintegrated.

Q. Based upon your experience in the terrorist bombings that you have described and the work that you have done as a forensic pathologist in Northern Ireland and based on your experience in the investigation of terrorist bombings, can you draw any conclusions or opinion concerning the identification of P71?

A. I can't draw any conclusions as to identification. All I can say is that this must represent another victim.

Q. Dr. Marshall, at my request, did you also review certain FBI reports concerning canvassing of various facilities?

A. I did.

Q. And specifically --

MR. JONES: May I approach, your Honor?

THE COURT: Yes.

BY MR. JONES:

Q. Without reading from that document, Dr. Marshall, just tell

Thomas Marshall - Direct

me if you reviewed it.

A. I have reviewed this document, yes.

Q. And from that document and the other work that you reviewed in this case, did you form an opinion as to the lengths the FBI and other police agencies had gone to to account for missing persons?

MR. RYAN: Objection, your Honor. This doesn't form the basis of any opinion of this witness.

THE COURT: Overruled.

THE WITNESS: The work was being carried out in relation to the identification of P54. And I formed the opinion that the authorities had gone to the greatest trouble to find out the origin of that left leg, P54.

BY MR. JONES:

Q. Now, you know from your work that P54 was eventually determined to be associated with a specific case.

A. I do.

Q. And that as a result of that identification, a leg in that casket had been removed?

A. It was.

Q. And contained P71?

A. Yes.

Q. Do you have an opinion as to whether the work done to locate by the canvassing P54 would also be applicable to finding who might be P71?

Thomas Marshall - Direct

A. Yes. I understand that a lot of work has gone into attributing P71 to a body, but it has failed.

MR. JONES: I have no further questions. Thank you, Dr. Marshall.

THE COURT: Mr. Ryan.

CROSS-EXAMINATION

BY MR. RYAN:

Q. Good afternoon.

A. Good afternoon.

Q. Dr. Marshall, my name is Pat Ryan. I'm the United States Attorney in Oklahoma.

A. Uh-huh.

Q. We've never met?

A. No.

Q. You met Dr. Jordan last night, did you not?

A. I -- I did, yes.

Q. You and one of the lawyers for Mr. McVeigh went to see Dr. Jordan?

A. Yes. Yes.

Q. Was that the first time you'd met him?

A. I think it probably is. Although I've heard of Dr. Jordan before.

Q. Dr. Marshall, where do you work?

A. Now I work as a consultant from home.

Q. From your home?

Thomas Marshall - Cross

A. From my home.

Q. When was the last time that you worked as a pathologist in a laboratory?

A. That would be 1989 when I retired as State Pathologist.

Q. Doctor, did you bring the protocol -- the written protocol that you used prior to your examination of this extra leg, Part 54?

A. I'm sorry. I don't understand what it is you're asking.

Q. Yes. Do you -- did you examine Part 54?

A. No.

Q. In the past two years, you have not -- had you been to the office of the Chief Medical Examiner in Oklahoma?

A. No. This is the first time I've been to this part of the United States on this case.

Q. Did you examine any of the body parts?

A. No.

Q. Anything sent to you by way of a body part?

A. I've gone entirely on the reports of the Chief Medical Examiner.

Q. How long have you been here in Denver?

Q. How long have you been here in Denver?

A. Since a week last Tuesday, so that'll be nine days then.

Q. And have you watched the trial during this entire nine-day period?

A. I haven't attended every session. I've attended a few sessions.

Thomas Marshall - Cross

Q. Now, you indicated that the largest number of people that you'd investigated in the course of your work as a pathologist was about 25 people that had been killed in a single incident?

A. No. I -- I think I was answering a question about the -- how many victims we'd had from one explosion.

Q. Yes, sir. That's what I meant.

A. Oh, right. And I said something about 25.

Q. And you were the pathologist at the time?

A. Yes. I was the State Pathologist.

Q. Yes. Were you involved --

A. I wouldn't autopsy all 25 victims.

Q. I understand that. Were you involved in this incident, however, in terms of the examination of the bodies?

A. Yes. Because I was in charge of the department like a medical examiner would be -- a chief medical examiner would be in your country.

Q. Now, you heard Dr. Jordan's testimony this morning. That's about the same number of people that he had previous to April 19 had occasion to examine in the course of a bombing or

explosive incident?

A. Yes. I think I heard him say there were 21 victims of a -- a firework factory or something like that.

Q. Yes. And you understood that was to be -- that was an explosion of some type?

A. I -- I understand that it was an explosion, but it -- most

Thomas Marshall - Cross

of these people were burned.

Q. Now, you're not a bomb expert, are you?

A. I'm not an expert on the manufacture or the priming or anything like that of --

Q. Right.

A. -- bombs, no.

Q. You are, however, I guess, somewhat familiar with the fact that certain types of -- of explosives have certain properties in terms of how they damage what they come into contact with?

A. Yes. In the way they act, you mean?

Q. Yes. In the way they act.

A. This isn't my field, but I have picked up a little knowledge, as most people will in this court, I think.

Q. And has it been your experience and knowledge that ammonium nitrate bombs have a pushing and heaving effect as opposed to a shattering effect?

A. No. I haven't that knowledge.

Q. Excuse me?

A. I hadn't that knowledge until I heard one of your witnesses.

Q. Okay. You were not previously familiar with that principle?

A. No. No.

Q. Apparently, though, you have been involved in at least one case, if not others, where there was a -- what you called a

Thomas Marshall - Cross

total disruption of the -- of a person?

A. Yes.

Q. And you indicated that body parts were strewn for a 200-yard radius, and I gathered you were talking about in a multitude of directions?

A. They can be.

Q. Yes. I mean, have you seen that?

A. Yes. In fact, we've had body parts that have been blown over a football stadium. That wouldn't be as big a stadium as you have in the States; but nevertheless, a football stadium.

Q. And we had testimony earlier in this case that when a bomb explodes, that the radius from which the bomb explodes goes in all directions.

A. Yes.

Q. Has that been your experience, as well?

A. It starts off in all directions, but I do believe it can be funneled.

Q. Now, do you know where P54, the leg in question, was located?

A. I don't.

Q. You don't know whether it was 200 yards west down the street from the Murrah Building by the Regency Tower hotel?

A. I don't.

Q. Or whether it was 200 yards east from the Murrah Building, down by Bentley's Carpet where a truck piece was found?

Thomas Marshall - Cross

A. No.

Q. Or whether it was in the parking lot across from the Murrah Building where cars were seen burning?

A. No.

Q. Or in the building, itself?

Now, I take it where the leg was found would have some relevance to an investigator in terms of where the person was when the bomb went off. Would you agree with that?

A. Well, it's -- yes. Certainly, one of the bits of information one would have to take account of.

Q. But you have not?

A. I -- I don't think I was concerned with where it was found. It was a question of whose leg was it.

Q. But you don't know that; right?

A. Nobody knew this at one time, and I've read the documents --

Q. But --

A. -- produced by the Medical Examiner which purported to prove whose leg it was.

Q. I gather then it does not make any difference in terms of your opinion whether the leg was found 200 yards away at the Regency Tower hotel or whether it was found eight days later in the rubble of the Murrah Building?

A. Are we talking about P54?

Q. Yes, sir.

Thomas Marshall - Cross

A. No, I don't.

Q. Doesn't make any difference to you where that leg was found?

A. No.

Q. Doesn't tell you anything about where this person was? Is that your testimony?

A. I was not concerned with where this person was.

Q. Well, a moment ago, you were telling us this person must have been very close to the bomb; isn't that right? So you were concerned with the location of the person?

A. Not with P54.

Q. What about --

A. Because P54 belongs to a person who was submitted to autopsy, was not blown to bits.

Q. All right. What about P71? Do you know where it was

found?

A. I don't know where that was found.

Q. You don't know whether it was found way east of the building, way west of the building in the parking lot, or the building, itself?

A. I don't.

Q. And does that make any difference to you in terms of forming an opinion about where the person was at the time of the blast?

A. I -- I believe I heard that P71 was found under the rubble

Thomas Marshall - Cross

after the bomb had been -- after the building had been finally demolished. But if it is not the case, it would interest me where P71 was found.

Q. Yes. But prior to coming here to testify today, you didn't know the answer to that question, where it was found?

A. No, I didn't.

Q. Would you not agree with me, sir, that if the leg is found in the rubble of the building, that that is some evidence that the person who died, had that leg, was in the building?

A. No, I don't think that follows. If no other parts of that body were found, that leg could -- is -- is likely to have come from near the seat of the explosion, and it can't -- it can travel considerable distances.

Q. If the person were behind the truck, where do you think

that leg would land?

A. I don't think you can say where it would land because it would depend in -- on a number of factors as to where it was sent by the explosion.

Q. What about if the truck was on the parking lot side of the -- excuse me -- the person was on the parking lot side of the truck? Wouldn't you think it's more reasonable that a body part would be found in the parking lot?

A. I don't think I'm going to say yes to that because explosions can be very capricious and do funny things.

Q. The fact of the matter is, you don't have any idea where

Thomas Marshall - Cross

the person was to which this leg belonged, do you?

A. I am forming my opinion on the fact that there is no other part of that body available, there is just a leg; and one must assume, having read the Medical Examiner's reports and found out how much effort went into sifting the rubble and getting parts back, that the rest of that body must have been disintegrated. And in order to be so, I believe that person must have been in the immediate vicinity of the van that exploded.

Q. You don't know where the person was, do you?

A. I don't know --

Q. You don't know whether this person was in the building, behind the truck, on the driver's side of the truck, in front of the truck? You don't know, do you?

OF THE TRUCK: YOU DON'T KNOW, DO YOU?

A. If the person had been in the building, I believe we would have found other parts of that body.

Q. But you don't know, do you?

A. Yes. I believe that from my experience and I believe because there is only a leg and nothing else, that that person was otherwise completely disintegrated and must have been in the vicinity of the van.

Q. Dr. Marshall, I'm sure you're not intentionally avoiding my question. I understand you say it's close to the truck.

That's your opinion?

A. Yeah.

Thomas Marshall - Cross

Q. I'm asking you, you don't know whether this person was in front of the truck, behind the truck, on the driver's side of the truck, or on the passenger side of the truck, do you?

A. I'm sorry if you think I'm avoiding your question.

Q. I'm just -- just answer that question, please.

A. You did mention the building.

Q. Yes.

A. As regards the truck, though, I don't know which side of the truck that person was at or whether they were inside the truck.

Q. All you know is the -- is that a leg was inside the building and not discovered for many, many days; true?

A. I know the leg -- or I believe the leg was in the rubble.

Q. Now, you've not examined the leg; right?

A. No.

Q. And so you don't know the condition of the leg in terms of from personal observation or visualization of the leg; correct?

A. That's correct.

Q. Now, were you here when we had testimony earlier in the case about one of the witnesses seeing one or two people in front of the Murrah Building?

A. I believe you asked Dr. Jordan that this morning. That's the only reference to that that I've heard.

Q. Were you provided prior to coming here today any information about people in and around the Murrah Building

Thomas Marshall - Cross

prior to the explosion?

A. No.

Q. Were -- I'm going to read to you a question and answer by the very first witness in this case, Captain Michael Norfleet of the Marine Corps. This is on page 36 at line 15.

"Question: All right. Now, when you got out of your truck, what did you do?

"Well, I got out of my truck and, you know, paid the meter there and probably walked by the Ryder truck, probably about an arm's length. Going in, I noticed that -- you know, one, maybe two people on the side sitting in front of the Social Security office there."

I won't go on. You were not aware of this testimony before coming here today?

A. I'm not, no.

Q. Now, if a person was in front of the Social Security office, that -- are you familiar with the layout of the building?

A. I've seen photographs of it after the explosion, and I've seen the plans that came with the Medical Examiner reports.

Q. And so you know that the front there where Captain Norfleet is referring to is very close to that truck?

A. No, I didn't know it was very close, but I will accept it is.

Q. Well, tell me, do you have -- based on your review of the

Thomas Marshall - Cross

plans and what you've heard, do you have any sense of what the distance is?

A. No, I haven't.

Q. If a person had -- if there was a planter there filled with dirt and bricks and a person had one leg on one side of the planter when a bomb went off, would it be reasonable to think that that leg might be preserved somewhat intact?

A. If they -- the planter, this is somebody doing horticulture?

Q. No. No one is planting anything. Simply a planter, a brick planter with dirt and flowers inside the planter.

A. Yes. I understand.

Q. And if one person had a leg on one side of that planter,
opposite the truck --

A. Yes.

Q. -- would it be reasonable to think that that truck -- that
that leg could be preserved --

A. Yes.

Q. -- intact while the rest of the body, in your words, was
disintegrated?

A. Yes. If the truck was near the planter.

MR. RYAN: I believe that's all I have of the witness.

Thank you.

THE COURT: Any redirect questions?

MR. JONES: Yes, your Honor.

Thomas Marshall - Redirect

REDIRECT EXAMINATION

BY MR. JONES:

Q. Dr. Marshall, as I understand it, in forming your opinion,
you were relying upon the accuracy of the records furnished to
you from this Chief Medical Examiner of Oklahoma?

A. Entirely.

Q. And in addition to that, you have also seen documents that
suggest that law enforcement made a determined effort by
canvassing facilities to see if there was anyone unaccounted
for?

A. I did. I've read that.

Q. And it has been two years since the bombing?

A. Uh-huh.

Q. Did you know that the Chief Medical Examiner's office was able to identify more than two dozen bodies of people that didn't work in the building, that just happened to be visiting?

A. I've heard that they did.

Q. Do you have any reason to believe that if there was some innocent bystander sitting outside the Murrah Building, that the Medical Examiner's office and the FBI wouldn't have made every effort to find that person?

A. Well, our experience is that when civilians like that do die, they are listed as missing -- missing persons fairly quickly, somebody misses them, and that when nobody misses them, it reinforces the suggestion that the deceased is

Thomas Marshall - Redirect

involved in the bombing.

Q. Do you know what the population is of Oklahoma City, Dr. Marshall? Do you have any --

A. No. No, I don't, sir.

MR. JONES: Nothing further. Thank you.

RE CROSS-EXAMINATION

BY MR. RYAN:

Q. Now, Dr. Marshall, you don't know whether this leg belonged to anybody involved in that bombing, do you?

A. I'm sorry?

Q. You don't know that this leg belonged to anyone involved in that bombing now, do you?

A. I don't know who the leg belongs to. I'm just saying that this is our experience.

Q. But you don't know, do you? And you don't know what extent -- to what extent anybody looked for missing persons in this big world of ours, do you?

A. Well, I think -- I think I do from the memorandum that I've been shown. It -- it -- that in itself shows that the authorities went to great efforts to trace a missing person to whom this leg might belong.

Q. What states did they check missing persons for; do you know?

A. What --

Q. What states of the United States?

Thomas Marshall - Recross

A. I don't think the memorandum lists the specific areas. It just lists the kind of facilities where they might get information about missing persons.

Q. You don't know, do you? You don't know what states were checked for missing persons, do you?

A. No. I've said the memorandum doesn't state what --

Q. You don't know what countries were checked?

A. What?

Q. Countries?

A. No. The memorandum doesn't state that. I take it it was all in the United States.

Q. And you don't know what cities even in Oklahoma were checked, do you?

A. The memorandum doesn't say.

MR. RYAN: That's all.

MR. JONES: May I have just a moment to ask Mr. Ryan a question?

THE COURT: Yes.

MR. JONES: Nothing further, your Honor. Thank you.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Are you going to excuse Dr. Marshall?

MR. JONES: Yes, your Honor. He'll be available on call if we need him.

THE COURT: All right. Next witness, please.

MR. JONES: Jeff Davis, your Honor.

(John Davis affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name.

THE WITNESS: John Jeffrey Davis, D-A-V-I-S.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. JONES:

Q. Mr. Davis, your first name is Jeff?

A. My first name is John. My middle name is Jeffrey.

Q. All right. And when were you born?

Q. All right. And when were you born.

A. March 9 of '73.

Q. And were you subpoenaed to appear here today?

A. Yes, sir.

Q. Mr. Davis, how do you currently earn a living?

A. I am employed by the provost marshal's office on Fort Riley under contract by Transtex Corporation.

Q. What is your job there?

A. I monitor the alarms on Fort Riley.

Q. The alarms, did you say?

A. Yes.

Q. The provost marshal is like police?

A. It's -- yes. Physical security.

Q. All right. And do you have another job?

John Davis - Direct

A. I am currently helping a couple of my friends get a used car dealership off the ground.

Q. And do you work there?

A. Yes, I do.

Q. How long have you worked as a security monitor at Fort Riley?

A. I've been employed there since November of '94.

Q. And where did you grow up?

A. I've grown up in Junction City, Kansas.

Q. Where did you graduate from high school?

A. St. Xavier's Catholic High School in Junction City.

Q. And the year?

A. '91.

Q. Was there a period of time, Mr. Davis, in which you worked for a business known as Hunam's Palace?

A. Yes, sir. From April of '91 until approximately April of '96.

Q. And what is Hunam's Palace?

A. It is a Chinese restaurant located in Junction City.

Q. And what were your duties there?

A. I was a delivery driver, and I also cooked for about six or seven months.

Q. In April of 1995, specifically April the 15th, were you working at Hunam's Palace?

A. Yes, sir.

John Davis - Direct

Q. And what were your duties that day?

A. I was delivering food.

Q. People that might call in an order --

A. I was also answering phones.

Q. All right. And do you remember about when you arrived at work that day?

A. I got there around 5:20 to 5:30.

Q. All right. You checked the time clock or verified that in some way?

A. Correct. From my time card.

Q. And do you remember what day of the week this was?

A. It was Saturday.

Q. And what would be your normal working period on Saturday?

A. I should have arrived there approximately 5 p.m., and I would have closed out that evening around 11:00.

Q. And would your job have been making deliveries all day?

A. Yes.

Q. Or all evening?

A. Yes, sir.

Q. So you were 20, 25 minutes late?

A. Correct.

Q. Do you remember why you were late?

A. I had worked on Fort Riley the previous night from 11 p.m. until 7 that morning.

Q. So you had your job at Fort Riley then?

John Davis - Direct

A. Correct.

Q. All right. Now, when you came to work, were there deliveries that you were to take?

A. Yes.

Q. And how many?

A. There were two that were sitting there as I walked in the door.

Q. Do you remember where they were to be delivered?

A. There was one that was going up the street from the

restaurant on Grant Avenue and one out to the Dreamland Motel.

Q. Do you remember the address on Grant Avenue?

A. I believe it was 948 Grant Avenue.

Q. You don't remember that after two years. Have you looked at something?

A. I've seen the written log of that.

Q. The log of deliveries?

A. Of the deliveries, yes.

Q. All right. Now, where is 948 Grant Avenue?

A. It's approximately four blocks up the street from the restaurant.

Q. And is it in a trailer park?

A. Correct.

Q. And the other delivery?

A. Was to Room 25 at the Dreamland Motel.

Q. And were you acquainted with where the Dreamland Motel was?

John Davis - Direct

A. Yes, sir.

Q. Do you remember the name on the order for the Dreamland?

A. The name on the ticket was Kling.

Q. Did the ticket reflect a first name?

A. No, sir.

Q. All right. Which delivery did you make first?

A. The one right up the street on Grant Avenue.

Q. And why was that first?

A. Because it would have been simpler to take that and then head out through Fort Riley to the Dreamland.

Q. After the Grant Avenue delivery, what did you do?

A. I went back down Grant Avenue, drove through Fort Riley out to Grandview Plaza to the Dreamland Motel.

Q. And why did you go through Fort Riley?

A. Because the bridge that is on Fort Riley Boulevard had just been -- I'm sorry -- Flint Hills Boulevard had just been shut down.

Q. By "shut down," you mean you couldn't get across it?

A. Correct. It was closed.

Q. Now, in front of you, Mr. Davis, is a model that's been admitted into evidence of the Dreamland Motel. Do you see that?

A. Yes, sir.

Q. All right. Now, you indicated that your delivery was to go to Room 25.

John Davis - Direct

A. Correct.

Q. And can you step down with the Court's permission and show the jury how you drove into the motel and where you went once you were there.

A. Yes, sir. I would have come down --

Q. Mr. Davis, can you stand behind the model so the jurors can see you.

A. Sure. Sorry. I would have driven in from Fort Riley and pulled in the entrance, across, and parked in front of Room 25.

Q. Now, when you parked in front -- you may resume your seat.

A. Thank you.

Q. When you arrived at the motel and pulled in there, what did you see?

A. There was a gentleman standing in the doorway of Room 25.

Q. Did you notice any automobiles about?

A. Nothing out of the ordinary. I recall a white rental-type vehicle, Corsica, Lumina, parked out in the parking lot.

That's it.

Q. Do you -- you have no recollection of any other vehicle?

A. No, sir.

Q. Were there others there and you just don't remember them, or were there none there but the white Corsica?

A. More than likely, there were vehicles there, but I cannot recall what they would have been.

Q. Now, what did you do with the order and the ticket from the

John Davis - Direct

order?

A. I got out of my car with the order. I took the ticket off the bag of food, and I proceeded to walk towards the gentleman that was standing in the doorway.

Q. All right. And then what happened next?

A. We had a small conversation. I was asked if I had had a

nard time getting out there due to the bridge being closed, or if I'd had any problems getting out there at all.

Q. You mean this is what you were asked?

A. Correct.

Q. All right. By the person you were delivering the Chinese food to?

A. Correct.

Q. All right. Go ahead.

A. I took the ticket off the bag and handed him the food. It was an order of moo goo gai pan and an order of eggrolls. And I was given the money for it.

Q. And how much were you given?

A. It was \$9.65. I was given \$11.

Q. All right. And what happened to the change?

A. I kept the change.

Q. Did you have any other conversation with this individual?

A. We discussed the fact that it had -- it was a fairly nice day out. It had been fairly dreary previous to that.

Q. At the time of the Oklahoma City bombing -- do you remember

John Davis - Direct

that?

A. Yes, sir.

Q. And after the bombing, were you interviewed by the FBI?

A. Yes, sir.

Q. And were you asked to give a description of the person that you delivered it to?

You delivered to us.

A. Yes, I was.

Q. And what is the description that you gave and remember?

A. Taller than I was. I'm right at 6-foot, 5' 11 1/2". Short blonde hair -- short hair, real dark blonde. Light, light brown. Roughly collar-length in the back, short on top, maybe 2 or 3 inches. Clean-shaven.

Q. And the weight?

A. Approximately 180 to 190.

Q. Now, did you notice anything particular about the hair?

A. No, sir. It was just generally unkempt.

Q. What do you mean by unkempt?

A. It wasn't styled in any particular manner.

Q. It wasn't a burr cut?

A. No. It was not.

Q. Was it floppy?

A. Yeah. It was -- it was tousled about.

Q. All right. What about the complexion?

A. Very clear-complected, light skin.

Q. And were there any facial hairs?

John Davis - Direct

A. No, sir.

Q. What was the man wearing?

A. Very casual, to my recollection. I couldn't be specific on colors or any of that.

Q. If the individual were wearing fatigues or a battle-dress

uniform, is that something you would likely remember?

A. Yes.

Q. And your recollection is they were wearing something casual?

A. Correct.

Q. All right. Now, did the FBI -- or strike that.

Were you shown photographs of Mr. McVeigh or did you see photographs of Mr. McVeigh?

A. Yes, sir.

Q. All right. And was the -- and of course, you know Mr. McVeigh is in the courtroom here?

A. Correct.

Q. Mr. McVeigh is the person sitting between the lady and the gentleman here. Was the person that you delivered the moo (sic) gai pan to Tim McVeigh?

A. No, I do not believe it was.

Q. Now, when you were standing there and the door was open, did you see anyone else in the room?

A. No, sir, I did not.

Q. Or did you see any evidence that there was someone else in

John Davis - Direct

the room?

A. I did not have that clear of visual path into the room.

Q. When you drove up, did you make any kind of noise, honk the horn or something like that, that might have attracted

someone's attention so they would open the door?

A. No, sir.

Q. Did you look at this individual in the face?

A. Yes, sir.

Q. And this was in the afternoon?

A. Approximately 5:30, 5:45.

Q. In April?

A. Correct.

Q. And was it daylight?

A. It was still light out, yes.

Q. What did you do after you left the Dreamland?

A. I went back through Fort Riley and went back to the restaurant.

Q. You made other deliveries that evening?

A. Yes, sir.

MR. JONES: I have no further questions. Thank you, your Honor.

THE COURT: Mr. Mackey.

CROSS-EXAMINATION

BY MR. MACKEY:

Q. Good afternoon, Mr. Davis.

John Davis - Cross

A. Hello.

Q. How are you?

You were a long-time employee at the Hunam Palace?

A. Approximately five years.

Q. Hardly anybody else delivered as many deliveries for that Chinese restaurant as you?

A. Probably not.

Q. You made it a practice on repeated occasions each week after week after week to deliver Chinese food for that restaurant throughout Junction City; correct?

A. Correct.

Q. And on occasion, you would deliver as many as 50 orders in one single night; correct?

A. If I worked a 12-hour shift, yes.

Q. Now, this jury has met Mrs. Bai, and that's the employer you had for five years at the restaurant; correct?

A. No. Mrs. Bai was the third owner of the restaurant.

Q. So you had previous employers?

A. Correct.

Q. Well, under Mrs. Bai, was your arrangement that you would get minimum wage plus a percentage of the food cost that you delivered?

A. Correct.

Q. So as a deliveryman making minimum wage, I assume you'd be interested in delivering as many orders as you possibly could

John Davis - Cross

each night?

A. Correct.

Q. So I take it it would be your practice with some dispatch to get an order delivered and get back to the next one; correct?

A. Yes.

Q. And Saturday night, I assume, in an Army town is one of the busier nights?

A. It's one of our busier, yes.

Q. Now, most of your customers -- most of your delivery customers are, in fact, military personnel; correct?

A. Yes. A large percentage of our business came from Fort Riley.

Q. 70, 80 percent, perhaps?

A. Approximately.

Q. All right. A lot of people wear fatigues?

A. Yes.

Q. Most of them young and fit?

A. For the most part.

Q. Many of them short haircuts?

A. Yes.

Q. Often displaying military manner?

A. Correct.

Q. You made repeated deliveries, did you not, on the base at Fort Riley, the Army base, itself?

John Davis - Cross

A. Yes, sir.

Q. And you found, did you not, that there was a high turnover in your clientele?

A. Yes.

Q. Army sends people in and out?

A. Correct.

Q. So it was not your experience, was it, Mr. Davis, that you got to know really any of your customers by name or by face?

Correct?

A. There were several that were there for a year or so at a time that ordered on a regular enough basis that I would have known them, yes.

Q. And of the thousands and thousands of deliveries you made, that was a very small percentage; correct?

A. Correct.

Q. In fact, the only persons that you remember by face are those who were the big tippers; right?

A. For the most part, either those or those that complained.

Q. All right. And the big tippers may have been maybe 10 or so individuals in all of your many years of delivery?

A. Oh, of our regulars, yes.

Q. Now, the night of Saturday, April 15, 1995, the run out to Dreamland was the second of 17, was it not, that same night?

A. I believe so, yes.

Q. All right. You made a stop, as you told Mr. Jones, before

you got to the Dreamland?

A. Correct.

Q. And in the course of that same evening, you made 15 other runs throughout the city?

A. Correct.

Q. Can you describe to the jury the person to whom you delivered the Chinese food right before you went to the Dreamland on Saturday, April 15?

A. No. I haven't been pounded for two years about that, either, sir.

Q. Well, let me ask you to take your time at this point in time and give a description of any other customer on that very same night, any of the other 17.

A. I can't remember.

Q. You arrived late at work on April 15; right?

A. Correct.

Q. Do you know whether the Kling customer had complained about his food not being delivered yet?

A. No, I don't.

Q. All you know is you got there and out the door with two bags?

A. Correct.

Q. And because of the bridge being out, you had to reroute yourself the long way back through the fort; correct?

A. Correct.

Q. Meaning that that first order is getting later and later?

A. Correct.

Q. How many times do you think you've delivered Chinese food in five years of delivery for Hunam Palace to the Dreamland Motel?

A. In excess of 50.

Q. It's not uncommon for that hotel to host a lot of construction workers, other people who are there on extended stays; correct?

A. Correct.

Q. They order Chinese takeout food?

A. Yes.

Q. And you deliver it?

A. Yes, sir.

Q. Saw a lot of trucks sitting around the Dreamland Motel in the 50-plus occasions you made deliveries; correct?

A. Correct.

Q. You also saw, I take it, a number of military personnel who were staying there at the Dreamland, did you not?

A. Occasionally, yes.

Q. Now, on Saturday, April 15, 1995, the delivery to the Dreamland meant absolutely nothing to you other than your 7 percent of \$9.65; correct?

A. Correct.

Q. Gave absolutely no thought to the time, the lighting

John Davis - Cross

conditions, clothing of your customer, facial features, until after the bombing in Oklahoma City; correct?

A. Correct.

Q. Been no occasion for you to talk about your episode at the Dreamland with anyone else?

A. Not to my recollection, no.

Q. And no occasion for you to sit down and review for whatever reason that event before the bombing in Oklahoma City; correct?

A. Correct.

Q. So the first time you were asked -- tell us, Mr. Davis, what you remember -- was by the FBI; correct?

A. Correct.

Q. Two days after the bombing, Friday night, at your restaurant; correct?

A. Yes.

Q. An FBI representative and the local sheriff's officer came out to see you; correct?

A. Correct.

Q. They were polite?

A. Yes.

Q. Professional?

A. Yes.

Q. Gave you all the time you needed to answer the questions, did they not?

A. Correct.

John Davis - Cross

Q. And you knew at that time that the only question they had for you or any other employee at the restaurant was who was it that made the delivery to the Dreamland Motel on Saturday previous; correct?

A. Correct.

Q. Nobody said anything about the Kling name on Friday night, April 21, when you were first interviewed; correct?

A. Not to my recollection, no.

Q. In fact, you do recollect that they talked to the other deliveryman to find, if they could, the person who may have made that delivery?

A. Correct.

Q. And in the course of that investigation, they found you?

A. Yes.

Q. Is that correct? They found you because you recalled making that delivery a few days earlier to the Dreamland?

A. Yes.

Q. And the reason you told the FBI on that first occasion that you recalled it at all was because of the bridge being out; remember that?

A. Correct.

Q. Had nothing to do with the event or the description; it had to do with your rerouting yourself the long way through the fort; correct?

A. Correct.

John Davis - Cross

Q. Because you and Mrs. Bai had argued among yourself as to whether the bridge was down or not?

A. Yes, sir.

Q. That stuck in your mind?

A. Yes.

Q. And that was the event you were relying upon when you stepped forward and told the FBI, "I'm the man who took the Kling order to the Dreamland Motel"; correct?

A. Yes.

Q. So having established that, they then asked you the natural question, did they not, Mr. Davis, "Tell us what that man looked like"?

A. Correct.

Q. And do you remember telling the FBI and the sheriff's deputy on that Friday afternoon that "The person to whom I made the delivery was a white male"? You said that; correct?

A. Correct.

Q. 28 or 29 years of age?

A. Yes.

Q. Very precise estimate on your part; correct?

A. Correct.

Q. About 6-foot tall?

A. Correct.

Q. About 180 pounds?

A. Yes.

John Davis - Cross

Q. You described his hair as short, sandy hair; correct?

A. Correct.

Q. Clean-cut?

A. Yes.

Q. With no mustache?

A. Yes.

Q. And that's all the description you gave the police on Friday, April 21; correct?

A. Correct.

Q. They had with them, did they not, some composite sketches?

A. Yes, sir.

Q. Two artists' renderings of two white men; correct?

A. Yes.

Q. And they showed you those two composites, did they not?

A. Yes, they did.

Q. And you looked at Composite No. 1; correct?

A. Correct.

Q. Do you remember it as you sit there now, it's military-looking-like features with a short haircut?

A. Yes.

Q. Maybe 28 or 29 years of age?

A. Yeah.

Q. All right. You studied the composite, I take it?

A. Yes, sir.

Q. You would do so because you knew this was important to the

John Davis - Cross

police?

A. Yes.

Q. Took your time, did you not?

A. Yes.

Q. And said, "I can't recognize that person because I see so many people in making deliveries, it's hard for me to recall faces"? Do you remember saying that when first interviewed by the FBI on April 21, 1995?

A. I don't remember that those were my exact words. I remember suggesting that I delivered a lot of food, yes.

Q. And that was true, was it not?

A. Correct.

Q. And that would be a barrier to you and any other delivery person in being able to recall with precision facial descriptions of customers met two, three days earlier; correct?

A. Correct.

Q. That was the task you faced on Friday afternoon; correct?

A. Yes.

Q. And your best job at that point in time was the description we talked about and your truthful answer that "I see so many faces, I don't recall"; correct?

A. Correct.

Q. They came back?

A. Several times.

A. Several times.

Q. Well, the next time was on April 25, 1995; correct?

John Davis - Cross

A. I believe so.

Q. The following Tuesday?

A. Yes.

Q. A few days had elapsed before -- or since the first time that they had talked to you; correct?

A. Correct.

Q. And this time, they had the Kling order. Remember that?

A. Yes.

Q. The delivery log you referenced?

A. Yes.

Q. And the order that says, "Kling, Room 25, Dreamland Motel"?

A. Yes, sir.

Q. All right. So some paperwork you hadn't seen the first time?

A. Correct.

Q. No doubt in your mind that's the order, Kling order, Room 25, Dreamland, that you had taken the previous Saturday?

A. Correct.

Q. They asked you again about the physical description, did they not?

A. Yes.

Q. And you told them at this time after the bombing, after having been asked previously, a white male, 28 or 29 years of

age, 6' 1 1/2" to 6' 2 1/2" tall. Correct?

A. Correct.

John Davis - Cross

Q. 180 pounds; correct?

A. Yes.

Q. Slender build.

A. Yes.

Q. Correct?

Short, sandy hair; correct?

A. Correct.

Q. Fair complexion; correct?

A. Yes.

Q. Clean-cut?

A. Yes.

Q. No facial hair?

A. Correct.

Q. No glasses?

A. Correct.

Q. No tattoos?

A. Correct.

Q. No scars or marks as you recall?

A. Correct.

Q. Wearing casual clothes?

A. Yes.

Q. And that was your best description on Tuesday, April 25,

1995.

A. Correct.

Q. You told the FBI on that Tuesday afternoon that you were

John Davis - Cross

aware of the bombing, obviously -- you'd been talked to before -- but you had made an effort not to expose yourself to any media about the bombing; is that correct?

A. Correct.

Q. You did tell them that you had seen the Sunday paper in the Junction City Daily Union, I think it is; right?

A. Yes.

Q. In which there was a photograph of a man identified by the name Timothy McVeigh?

A. Correct.

Q. And you told them that's what you had seen since the time that you had talked to them before?

A. Correct.

Q. And this was a photograph that was neck high?

A. Yes.

Q. Nothing more? Portrait shot?

A. Correct.

Q. You had seen that and nothing more; correct?

A. Correct.

Q. They asked you to look at a photo spread, did they not?

A. Yes, they did.

Q. They didn't just hand you a single picture of Timothy McVeigh. They handed you a composite, a series of photographs together; correct?

A. Yes, they did.

John Davis - Cross

Q. They wanted to test your memory to see whether you might be able to identify the customer from among those several photographs; correct?

A. Correct.

Q. And they told you that if you looked at that photograph spread, you should rely on only your memory, set aside anything you may have seen in the media and also told you the person who was the customer may or may not be in that composite spread?

A. Correct.

Q. And you looked at it.

A. Yes.

Q. And you told them then after looking at it, "I don't see anybody in this photo spread who was the customer"; correct?

A. Correct.

Q. And then you told them "because I don't have enough recall of the event of making that delivery to remember. I only remember bits and pieces of the transaction."

A. Correct.

Q. Did you tell them that?

A. Yes.

Q. But you also on Tuesday April 25, 1995, told the FBI, "The man to whom I delivered that bag of Chinese food is not Tim McVeigh"?

A. Correct.

Q. You made that statement to them?

John Davis - Cross

A. Yes, I did.

Q. And you told them that you'd come to that conclusion after looking at that portrait photograph in the Junction City paper just a couple days earlier; correct?

A. Yes.

Q. What you told them was the man in the photograph, Tim McVeigh -- the picture of Tim McVeigh has less hair than my customer and a thinner face; correct?

A. Correct.

Q. Now, something happened, Mr. Davis, did it not, between the first time the FBI talked to you and the second time concerning your recollection of these events?

A. I don't understand your question.

Q. Well, let me ask it again. On April 21, you told them, "I can't recall the identity of this person, I see too many faces." Four days later, you said, "I know it was not Tim McVeigh"; correct?

A. Correct.

Q. On Sunday, April 23, a day right in the middle of that

sequence there, did you go public with your view that the person to whom you delivered the Kling order was not Tim McVeigh?

A. That I did not believe so, yes.

Q. Talked to the Washington Post?

A. Correct.

John Davis - Cross

Q. Did they call you or did you call them?

A. They contacted me.

Q. And when they called you, Mr. Davis, did you understand the significance of your role in a case that might end up in a federal courtroom in Denver, Colorado?

A. I don't think I recognized the import of it at that point, no.

Q. You do now?

A. Obviously so.

Q. When you went public for the first time on Sunday, April 23, 1995, and announced that you believed that the customer was not Tim McVeigh, you were aware, were you not, of the significance of that statement?

A. Yes.

Q. But the only thing that served as a basis for that new opinion, Mr. Davis, was your single observation of a head shot of Tim McVeigh in the local newspaper; correct?

A. Correct.

Q. Now, when you had seen this customer on Saturday night, April 15, many days had passed, had there not, until Mr. McVeigh was taken into custody?

A. A few, yes.

Q. It doesn't take very long to get a haircut, does it, between Saturday night and the next Tuesday, Wednesday or Thursday; correct?

John Davis - Cross

A. I would assume not.

Q. Did you come to understand that the photograph that you were looking at and relying upon was a photograph of Mr. McVeigh shortly after his release in Noble County?

A. Yes.

Q. Did you understand that -- or come to think that perhaps people may look thinner after they have been setting in jail for a couple days?

A. It's possible; correct.

Q. But as you have thought about your encounter with this individual at the Dreamland, what's been most memorable about your description is his height; correct?

A. Correct.

Q. On a scale of 1 to 10, that's at the top?

A. Yes.

Q. You've always been most certain that the person to whom you handed this bag was 6-foot or a little bit more; correct?

A. Taller than I; correct.

A. Taller than I, correct.

Q. And you've always been, on a scale of 1 to 10, virtually positive that his weight was about 180?

A. Yes.

Q. And that his build was slender?

A. Yes.

Q. And then after that, your memory and recollection of some of those features trails off, does it not?

John Davis - Cross

A. Correct.

Q. You have much less certainty about your description of this person than height, weight, and build; correct?

A. Correct.

Q. Would you tell the jury what you learned about the height of Mr. McVeigh by looking at a portrait photo in the Junction City paper.

A. Nothing. It was from the neck up.

Q. Would you tell the jury then what you learned about his weight based on looking at a photograph from the Junction City newspaper.

A. I would have to give you the same answer.

Q. And it would be the same as to his build; correct?

A. Correct.

Q. You have said, have you not, Mr. Davis, that of all these physical features that you were asked or tasked with trying to recollect, coming up with the features of the face has been the

most difficult; correct?

A. Some of them, yes.

Q. As you set there now, you do not have a positive recollection of the facial features of the person to whom you handed that bag on Saturday, April 15; correct?

A. Yes, I do.

Q. As you set there now, Mr. Davis, and on any previous occasion, have you wondered aloud or quietly whether you may

John Davis - Cross

have jumped to conclusions?

A. To what extent and about what?

Q. About your statement now under oath that the person to whom you delivered the Chinese order was not Tim McVeigh.

A. No, I do not believe it was.

Q. And you've not wondered about whether you've jumped to conclusions about that statement?

A. I may have, yes, but I do not believe it was, no.

Q. In June of 1995, Mr. McVeigh's representatives came and saw you in Junction City, did they not?

A. Correct.

Q. And did they interview you?

A. Yes.

Q. And did they tape record that interview?

A. Not to my knowledge at that time, no.

Q. If there is a transcript of the interview between you and

representatives of McVeigh, you're saying that that was done secretly?

A. I had no knowledge of it at the time, no.

Q. Well, you do remember them asking you some of the same questions we've talked about in this courtroom this afternoon; correct?

A. Yes, sir.

Q. "Do you think the customer that you delivered it to was Tim McVeigh" and you said no; right?

John Davis - Cross

A. Correct.

Q. And in June of 1995, you told them the major problem you had between reconciling the Tim McVeigh now in custody with the individual at the Dreamland was his hair; correct?

A. One of them, yes.

Q. Your words were, "My major problem is his hair."

A. If that's what's in the transcript, then that's probably what I said, sir, yes.

Q. They questioned you about how many times you talked to the FBI; correct?

A. Correct.

Q. And you told them that on one occasion, you had been asked to meet with the FBI --

A. Yes.

Q. -- to view this photo spread, in fact?

A. Yes.

Q. And that it interrupted your plans because you were going off to do an interview with a news organization; correct?

A. I believe so, yes.

Q. In the course of that interview with the McVeigh representatives, they asked you about this statement to the Washington Post; correct?

A. I believe so, yes.

Q. And then you asked them, Could I please get a copy of that story from you.

John Davis - Cross

A. Yes.

Q. And then you complained, did you not, Mr. Davis, that you have talked to a number of news organizations and they, in fact, interviewed you, television camera on one occasion, wasted three hours because they didn't run the segment; correct?

A. Correct.

Q. Mr. Davis, at any point in time, have you had any fear for your personal safety or that of your family members if you were to testify different than what you have done so here today?

A. No.

Q. Have you ever expressed such a fear to a representative of the FBI?

A. No. I was asked about that, though.

Q. Do you deny, Mr. Davis, telling an FBI agent that you were concerned that if, in fact, you identified the customer as Tim McVeigh, that some day, you may open the door on one of your deliveries and find a shotgun?

A. If that was said, the agent that it was said to would not have been familiar with me enough to know the sarcasm in my voice.

Q. That was a joke?

A. No. That was sarcastic. At no point have I been that concerned for my safety that I would change my testimony because of that.

John Davis - Cross

Q. My question is do you deny making that statement.

A. No.

Q. Mr. Davis, when asked by Mr. Jones whether the man to whom you handed the Chinese order is in this courtroom today, you said, I do not believe that it's Tim McVeigh.

A. Correct.

Q. All right. And I want to ask you, can you say, Mr. Davis, with 100-percent certainty that you have never seen this person in person before?

A. From my memory, I have never seen him, no.

Q. And you have felt convinced of that since April of 1995; correct?

A. Yes.

Q. And have always said publicly and when interviewed by law enforcement and defense representatives there was only one man in that room and that man was not Tim McVeigh?

A. Correct.

Q. And on no occasion prior to coming to court in this trial before this jury and this judge have you ever said anything different?

A. Not to my recollection, sir, no.

Q. Well, take a moment and reflect. Have you ever on any prior occasion before today said anything different than what you've told this jury?

A. Not that I can recall, sir, no.

John Davis - Cross

Q. Recall if you will, Mr. Davis, coming to Denver last fall, September of '96. Did you stay at the Burnsley Hotel?

A. Yes, sir.

Q. All right. And you were there for a couple nights?

A. Yes.

Q. Visited the happy hour?

A. Yes.

Q. Stayed a little while?

A. Yes.

Q. Was there when it opened and stayed after it closed; correct?

A. Yes.

Q. Had conversation with, as they always are, friendly bartenders?

A. Of course.

Q. In the course of that same evening, you met a paralegal representative of another defense -- or another defendant in this case?

A. Not that I am aware of, no.

Q. In the same evening, did you meet an investigator for another defendant?

A. No.

Q. All right. Well, you do recall talking to the bartender at the Burnsley Hotel last fall?

A. Correct.

John Davis - Cross

Q. Do you remember, Mr. Davis, telling that person that there were two men in the room --

A. No, sir.

Q. -- when you delivered the Chinese order?

A. No, sir.

Q. You deny that?

A. Yes, sir, I do.

Q. Do you remember in April of 1996, there was a number of specials about the first anniversary of the Oklahoma City bombing?

A. Correct.

Q. And were you asked to give an interview by one or more news

Q. And were you asked to give an interview by one of those news organizations?

A. Yes, sir.

Q. And did you consent to do so?

A. Yes, sir.

Q. Were you paid?

A. No, sir.

Q. Did you seek compensation?

A. Gas money from Topeka on one occasion, sir.

Q. Excuse me?

A. Gas money to and from Topeka on one occasion.

Q. Topeka is where you went to meet with representatives of ABC News?

A. Yes, sir.

John Davis - Cross

Q. Correct? A few days before the anniversary of bombing?

A. Yes.

Q. Early April 1996?

A. Yes.

Q. And they wanted to interview you and get your story then that you are the deliveryman who would swear and say that, Tim McVeigh is not the person to whom I handed the Chinese order; correct?

A. Correct.

Q. And that's what you told them on camera; correct?

A. Yes, it is.

Q. Before you went on camera, you set down, did you not, with a composite artist?

A. Yes, sir.

Q. A woman named Jean Boyland?

A. Yes, sir.

Q. And just the two of you set down and you -- you gave her a description of this man to whom you had delivered the Chinese order; correct?

A. Correct.

Q. Spent a fair amount of time with Ms. Boyland?

A. Yes, sir.

Q. It takes time to develop an artist's composite, does it not?

A. Yes.

John Davis - Cross

Q. You were comfortable with Ms. Boyland, were you not?

A. Reasonably so.

Q. You were open and honest with her, were you not?

A. Yes, sir.

Q. Would never have lied to her, would you?

A. No, sir.

Q. Isn't it a fact, Mr. Davis, that in the conversation with Ms. Boyland, you told her that Tim McVeigh was in Room 25?

A. No, sir, it's not.

Q. You deny that?

A. Yes, I do.

MR. MACKEY: I have nothing else. Thank you,

Mr. Davis.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. JONES:

Q. Mr. Davis, where do you get your hair cut?

A. I have a friend of mine that is a beautician and she cuts my hair.

Q. All right. So you're generally familiar with the barbershops and beautician shops and places where people cut their hair in Junction City?

A. Yes.

Q. Are any of them open on Saturday night?

A. None that I'm aware of.

John Davis - Redirect

Q. Any of them open on Sunday?

A. Not that I could be certain of, no.

Q. How about Monday?

A. No. Most barbershops are closed on Monday.

Q. That's right. They are closed on Monday, aren't they?

A. Yes, sir.

Q. Have you seen a picture of Tim McVeigh at the McDonald's that was taken on Monday afternoon?

A. I don't believe so.

Q. All right. So if Mr. McVeigh were Kling, can you tell us, please, where he would have gotten his hair cut in Junction City from the time you saw him on Saturday, if the Government's theory is true, to the time that he was picked up on the McDonald's camera?

MR. MACKEY: Objection to the form of the question.

THE COURT: Sustained.

BY MR. JONES:

Q. Mr. Davis, the Oklahoma City bombing, would you say that's the biggest thing that's happened in Junction City in a long

time?

A. Yes, sir.

Q. And were there a lot of news people in town?

A. Yes.

Q. How do you think the news people knew to contact you?

A. I wouldn't know.

John Davis - Redirect

Q. You didn't contact them?

A. No, sir.

Q. And the first person that came to see you was an FBI agent?

A. Correct.

Q. And did the FBI agent come to you first or a news organization first?

A. The FBI.

Q. And how soon after the FBI contacted you did a news organization contact you?

A. Evidently, later that week.

Q. In any event, no one from Mr. McVeigh contacted you until several months later; is that right?

A. Not that I'm aware of, no.

Q. All right. Now, the FBI has interviewed you in this case on numerous visits, have they not?

A. Yes, sir.

Q. And in fact, they requested that you come to Denver to talk to them?

A. Yes, sir.

Q. And they didn't subpoena you to Denver, did they?

A. No, sir.

Q. The grand jury wasn't sitting here, was it?

A. No.

Q. And you agreed to come to Denver to talk to them?

A. Yes, sir.

John Davis - Redirect

Q. And how many days were you in Denver at their invitation?

A. Three, I believe.

Q. All right. And they have contacted you on other occasions to talk with you?

A. Correct.

Q. And have you always talked with them?

A. Yes, sir.

Q. And answered their questions?

A. Yes, sir.

Q. Can you recall a time when you have not been willing to sit down and talk to the FBI?

A. No, sir.

Q. Now, you were contacted by the Washington Post?

A. Yes, sir.

Q. And you asked an investigator for Mr. McVeigh if they would send you a copy of the Washington Post article?

A. Correct.

Q. Did you understand the Post had quoted you?

A. I believe so, yes.

Q. Did you want to see what they had said?

A. Yes, sir.

Q. Had they sent you a copy?

A. No, sir.

Q. Now, from your observation and being in and around Junction City, were the media talking to other people?

John Davis - Redirect

A. Yes, sir.

MR. MACKEY: Objection.

THE COURT: What's the objection?

MR. MACKEY: Lack of knowledge.

THE COURT: Sustain the objection.

THE COURT: Sustained.

BY MR. JONES:

Q. Now, when the FBI showed you this composite, did they show you a full figure of a man or just from the head up?

A. Just from the head up, sir.

Q. And when you were shown this photographic spread, was it the full figure or just from the head up?

A. Portrait shots from the head up.

Q. All right. And that's what appeared in the Junction City newspaper?

A. Correct.

Q. And that's what the FBI showed you? They showed you similar pictures?

A. Correct.

Q. Okay. Now, Mr. Davis, you've been delivering or at least you did deliver for a period of, what, four years, five years?

A. Five years.

Q. And that was pretty much a full-time job?

A. Yes, sir.

Q. Were you acquainted with the risks of being a delivery person?

John Davis - Redirect

A. Such as?

Q. That somebody might try to rob you?

A. Yes.

... 100.

Q. Or hurt you?

A. Correct.

Q. You were familiar with those risks?

A. Yes, sir.

Q. And you were delivering food in an Army town?

A. Yes, sir.

Q. Now, the FBI first came to see you, I believe Mr. Mackey said, on April the 21st.

A. Correct.

Q. That would be the same day that Mr. McVeigh was arrested, wouldn't it? Do you remember that? If you don't --

A. I wouldn't be able to say for sure, no.

Q. Do you remember the day of the Oklahoma City bombing?

A. Yes, sir.

Q. And how many days after the bombing did they come to see you?

A. A couple after that.

Q. All right. And how many days, when they came to see you, was that from the Saturday where you had delivered the moo (sic) gai pan to Mr. Kling at Room 25?

A. Just under a week.

Q. All right. The delivery to the Kling customer was on

John Davis - Redirect

Saturday?

A. Correct.

Q. And the FBI came to see you on the 21st?

A. Correct.

Q. Do you remember what day Saturday was?

A. It was the 15th.

Q. So that would make the 21st what day of the week?

A. The 21st would be a Friday.

Q. Now, as I understand it, from your testimony, the Kling delivery was which delivery you made that day?

A. It was the second one I made that day.

Q. On which delivery run?

A. My first run out.

Q. Did I understand you to say that in those five years, you had made like maybe 50 deliveries to the Dreamland?

A. Easily so.

Q. Would you say it averaged, what, one a month?

A. Roughly.

Q. The Dreamland is in Junction City or on Fort Riley?

A. It's in Grandview Plaza.

Q. All right. So it's not a military post?

A. No, sir.

Q. You do make a lot of deliveries to military people?

A. Yes, sir.

Q. At the post?

A. And off post, also.

Q. All right. At their homes?

A. Yes, sir.

Q. In a given month, how many deliveries do you make back then in April of '95, say, to all the motels? What percent -- let me ask it another way. What percent of your deliveries in April or the spring of '95 are to motels?

A. I would say under 10 percent.

Q. Under what?

A. Under 10 percent.

Q. Under 10 percent. So is it usual or somewhat unusual to go to a motel?

A. It's not a -- it was not a large part of our business at that point.

Q. All right. Now, when you went to the motel, you were looking for Room 25?

A. Correct.

Q. So where did you stop?

A. In front of Room 25.

Q. And did you know where Room 25 was or did you look to find it?

A. I would have had to have looked.

Q. All right. Did you look?

A. Yes, sir.

Q. Okay. And was there a car parked in front of Room 25?

A. Mine.

Q. So there was no car there before you got there?

A. Not -- no, sir.

Q. All right. And the door was open?

A. Yes, sir.

Q. Now, in what percent of your deliveries when you arrive at somebody's place is there somebody already with the door open, standing there to see you?

A. Generally, when we're running late with the delivery.

Q. All right. And what percent of the time is that?

A. I would hope it would be under 5.

Q. Well, seriously, what percent do you think it is?

A. I would say under 5.

Q. All right. What is the usual practice when you pull up to somebody's place?

A. We would get out and knock on the door.

Q. Or ring the bell?

A. Correct.

Q. All right. So the place that you were going as a residential unit, that is a motel as opposed to an apartment or a house is less than 10 percent or about 10 percent of your deliveries?

A. Yes, sir.

Q. And you say a somewhat smaller percent actually meet you at the door?

John Davis - Redirect

A. Yes, sir.

Q. And then on top of that, you had to go an alternate route, didn't you?

A. Yes, sir.

Q. And that was because --

A. The bridge was out.

Q. All right. And the person that was at the door talked to you?

MR. MACKEY: Judge, can I object? I mean, this is -- excuse me. It's going back over examination.

THE COURT: Overruled.

BY MR. JONES:

Q. The person at the door talked to you?

A. Yes, sir.

Q. Stood in the door?

A. Yes.

Q. Didn't have a hat on?

A. No.

MR. MACKEY: Object to the form of the question.

BY MR. JONES:

Q. Did he have a hat on?

A. No, sir.

Q. Okay. Did this individual do anything to shield or hide his appearance?

A. No, sir.

John Davis - Redirect

Q. All right. And you had a conversation with him?

A. A short one, yes.

Q. And tell me what the conversation was.

A. We discussed the fact that it was a relatively nice day and that he questioned if I had had a hard time finding where he was.

Q. All right. And then he gave you a small tip?

A. Yes, sir.

Q. Now, was your delivery late?

A. Yes, sir.

Q. Okay. Now, what percent of the people that you're late in delivering the food to in the spring of '95 gave you a tip and have a conversation with you?

MR. MACKEY: Objection. Relevance.

THE COURT: Overruled.

A. I wouldn't be able to put a percentage number on that.

BY MR. JONES:

Q. Is it a frequent or infrequent occurrence?

A. I would consider it very infrequent.

Q. Now, you were also subpoenaed to testify before the grand jury, were you not?

A. Yes, sir.

Q. And did the prosecutors ask you to describe the individual that you delivered the food to when you testified before the grand jury?

John Davis - Redirect

MR. MACKEY: Objection.

A. Not that I recall --

THE COURT: What's the objection?

MR. MACKEY: Relevancy. It's also a mat --

THE COURT: Overruled in view of your
cross-examination.

MR. MACKEY: All right. Thank you, your Honor.

BY MR. JONES:

Q. You may answer the question.

A. Not that I can recall, sir, no.

MR. JONES: Thank you, Mr. Davis. That's all.

THE COURT: Mr. Mackey?

MR. MACKEY: Thank you.

RE-CROSS-EXAMINATION

BY MR. MACKEY:

Q. Mr. Davis, let me show you a photograph previously admitted
into evidence, Exhibit 414. See that before you?

A. Yes, sir.

Q. You cannot swear that that vehicle was not setting in the
parking lot of the Dreamland Motel when you delivered the order
on Saturday the 15th; correct?

A. I would be unable to tell you what was in that parking lot
other than myself.

Q. All right. So this vehicle could have been there?

A. It's possible, ves.

John Davis - Recross

Q. When you had the conversation with this customer, there was some mention about the bridge being out; right?

A. Yes, sir.

Q. And you thought to yourself at that time this is someone who's familiar with this area; correct?

A. Familiar enough to know that there would have been two ways there, yes.

Q. Mr. Davis, this is Government Exhibit 299A. Do you recognize that as being the order that you delivered at the Dreamland?

A. Yes, sir.

Q. This shows the address as being the Dreamland, Room 25; correct?

A. Correct.

Q. And as you set there now, there's no doubt that the order you delivered was to Room 25?

A. Correct.

Q. Not to Room 23 or 18, but to Room 25?

A. Correct.

Q. And whoever was in that room was using the name Kling; correct?

A. Yes, sir.

MR. MACKEY: I have nothing else.

REDIRECT EXAMINATION

BY MR. JONES:

John Davis - Redirect

Q. Mr. Davis, when you pulled up, did you address this customer?

A. Yes, sir.

Q. What did you say to him?

A. I apologized for running late with the food.

Q. And did the customer identify himself?

A. No, sir.

Q. So you didn't use the name Kling?

A. No, sir.

Q. And the customer didn't?

A. No, sir.

Q. The name on the delivery ticket that Mr. Mackey showed you, is it your understanding that came from a phone call?

A. Yes, sir.

Q. To deliver the order to Room 25?

A. Yes, sir.

MR. JONES: Nothing further. Thank you.

MR. MACKEY: Nothing. Thank you, your Honor.

THE COURT: Is this witness excused?

MR. JONES: Your Honor, I would like to -- he may certainly leave. I would like to have him available, please.

THE COURT: All right. You may step down. Please do not discuss your testimony with any other witness.

THE WITNESS: Yes, sir.

THE COURT: We're going to recess at this time, members of the jury, for our usual afternoon break. And of course, during this time, the usual cautions are in place, as I'm sure you understand. Please do not discuss anything about our case among yourselves or with any other persons or permit anyone to speak to you or in your presence about it. And continue to avoid communications of any kind that could influence you.

You're excused. 20 minutes.

(Jury out at 3:13 p.m.)

THE COURT: Mr. Mackey, Mr. Jones, please approach.

(At the bench:)

(Bench Conference 109B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: Court's in recess.

(Recess at 3:15 p.m.)

(Reconvened at 3:35 p.m.)

THE COURT: Be seated, please.

(Jury in at 3:35 p.m.)

THE COURT: Next witness, please.

MR. JONES: Vicki Beemer.

THE COURTROOM DEPUTY: Would you raise your right hand, please.

(Vicki Beemer affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.

Would you state your full name for the record and spell your last name.

THE WITNESS: Vicki Beemer, B-E-E-M-E-R.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Jones.

DIRECT EXAMINATION

BY MR. JONES:

Q. Ms. Beemer, there is a glass of -- well, actually, it's a pitcher of water and paper cups there on the witness stand, if you need it.

Ms. Beemer, where do you live?

A. I live --

Q. You don't have to give a street address. Just give me the

town.

A. I live in Chapman, Kansas.

Q. And how far is that from Junction City?

A. About 8 to 10 miles.

Q. And do you work in Junction City?

A. Yes, I do.

Q. Where do you work there, ma'am?

A. I work at Elliott's Body Shop.

Q. And where is Elliott's Body Shop?

A. It's in Junction City, Kansas.

Q. And where is it in relation to Interstate 70?

A. It is -- it's east of Chapman, about 12 miles.

Q. All right. Now, how long have you been working there at Elliott's?

A. I've been working there around 2 1/2 years.

Q. So you were working there in April of 1995?

A. Yes, I was.

Q. You work a full day there, do you?

A. Yes, I do.

Q. Five days a week?

A. Yes, sir.

Q. And you come in sometimes on a weekend, don't you?

A. I have worked a couple Saturdays, yes.

Q. A couple Saturdays a month, or just a couple Saturdays?

A. Just a couple Saturdays.

Vicki Beemer - Direct

Q. All right. Will you take just a moment and tell me a little bit about the business of Elliott's Body Shop.

A. It is a body shop. We also rent Ryder trucks. It's -- you know -- it is just -- we have a couple body men that work there. We used to have a mechanic. We no longer have a mechanic, and it's just -- just a regular auto body shop.

Q. And by "body shop," we mean the repair of motor vehicles that for some reason or the other have been damaged?

A. That's right.

Q. Whether it's in an accident or hailstorm or bad weather or whatever?

A. That's right.

Q. All right. Now, in April of 1995, about how many men and women worked there, Ms. Beemer?

A. I believe there was around, counting Eldon and myself -- there was probably seven to nine. I'm not sure exactly. There was around seven to nine. I don't know if it was seven with Eldon and I, or nine with Eldon and I.

Q. By "Eldon," you're referring to who?

A. Eldon Elliott, the owner.

Q. Was there anybody else that worked regularly in the office other than you, ma'am?

A. No, sir.

Q. All right. So your duties were what?

A. Answer the phone, do the body shop tickets, just anything,

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you know -- I was more or less an office manager. I just handled the office, and I also was a Ryder rental dealer.

Q. When you say you were a rental dealer, you were a rental dealer for whom?

A. For the Ryder trucks.

Q. All right. You all didn't handle any other rental operation other than Ryder?

A. No.

Q. All right. Did you also make payroll?

A. Yes, I do.

Q. And you took care of the customers who came in for the trucks?

A. Yes, sir.

Q. Now, there must have been some system that you had to know when a customer was going to come in and whether there would be a truck available and it would be ready and all of that, cleaned up and so forth. Is that right?

A. Yes, sir.

Q. Okay. Just tell me a little bit about how that worked in April of 1995.

A. The first thing that we do is we give a quote on a Ryder truck. They will either call in or come in, and we will give them a quote to tell them how much it costs to go from Junction City to another destination, or we also rent them locally.

When they are giving -- given the quote, then they can

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then either reserve it, or they can get back with us and reserve it. Then once they reserve it, that means that that is a reservation and they will come in on whatever their day is that they have told us they want to pick the truck up; and we have a board in our office that we put all the trucks that are to be rented. It's a calendar board. And we put them on the designated days, names, the size of truck, whether it's a local. If it's a local, we don't circle it. If it's not a local, if it's a one-way, we circle it.

Q. Okay. I think I understand. Now, you said you got inquiries two ways: Either somebody came in, or they called.

A. That's right.

Q. And in the spring of '95, what percent called as opposed to come in?

A. The biggest percent call in. I don't know. It's probably 75 percent of them call in.

Q. Now, as I understand it, you've got some kind of computer network with the main Ryder office?

A. That's right.

Q. And the computer network is a part of the establishment of the quote and the reservation.

A. That's right.

Q. And then ultimately a truck is rented, it prints out some kind of form?

A. That's right.

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Q. All right. Let us go back to the beginning.

A. Okay.

Q. Say I call in and I want to rent a Ryder truck and it's April of '95 and I want to go to Omaha.

A. Yes, sir.

Q. Now, what do you do to get the information to answer my question? Just walk me through it.

A. When the customers, say, they call in, the first thing I ask them is -- well, when they call, they will say they're interested in renting a Ryder truck, or it's determined that they want to know how much it will cost. I will tell them that this is done in a computer, so I'm going to have to get some information; that I cannot give any kind of a quote without putting it in this computer.

Q. What are you going to ask me?

A. First thing I'm going to ask you is your last name.

Q. Okay.

A. Then I'm going to ask you your first name. Then I will ask you a daytime telephone number. Then I will ask if it is a one-way, or a local.

I will ask if it is a personal move, or a military move. I will ask the date that they would wish to pick the truck up. I believe the next thing is the size of truck. And once you -- once you put in the computer the size of truck they ask for, the computer screen will show you how much -- will

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give you how many days, how many miles for a certain price.

Q. Now, that price -- you don't really do anything to determine it except for the material you put in the system.

A. The only -- no, that's true, except if it is a military move, then I will give them a 10 percent military discount.

Q. All right. Somehow or other, there is some computer program somewhere that takes information you've put in and tells you what the quote is.

A. That's right.

Q. Now, can the quote change?

A. From day to day?

Q. Yes.

A. Yes, sir.

Q. Can it even change while you're there on the customer (sic)?

A. I've never known it to do that, but we guarantee a quote for 24 hours.

Q. So you put this information in. Now, does -- when you put in the information for the quote, is a time generated as to when this transaction is taking place?

A. Not on the quote, it isn't.

Q. All right. And then presumably you give the customer the information.

A. That's right.

Q. All right. Then what's been your experience? Do people

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say, Okay, I'll take it, or, I want to think about it, or what?

A. Both. They will say either, I need to do some checking around, or they will say, Okay, I want to go ahead and reserve it; because like I say, we guarantee it for 24 hours.

Q. Now, when you say you guarantee it for 24 hours, does a customer have to do something within that 24-hour period?

A. No. By the end of that 24 hours, they have to give us an \$80 deposit to lock that price in.

Q. All right. Now, can they do that by credit card?

A. Yes, sir.

Q. And they can do it, of course, by cash?

A. Right.

Q. And I presume they can do it by check.

A. That's right.

Q. All right. Now, back in the spring of '95, what did most of your customers do? They pay you -- make this deposit by check, by cash, or by credit card?

A. It really varies. The military, of course, normally pay with cash. We do have a lot of credit cards for the reservation, or for the rental.

Q. All right. Now, these military folks that are reserving or, for that matter, anybody that's paying cash: They have to come in?

A. To reserve it, if they do it with a credit card, they can do that over the telephone.

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Q. I understand. But if they're paying by cash, they have to physically come to where you are?

A. That's right.

Q. And you have a system set up to accommodate people for the weekend, don't you?

A. What do you mean by "system"?

Q. Well, somebody that calls you on Friday, say, they've got 24 hours?

A. That's right.

Q. And there is a short period of time that Elliott's is open on Saturday, isn't there?

A. That's right.

Q. All right. In the spring of '95, before April 19, what were the Saturday hours as you remember them?

A. I believe they were like 8 to 10:30 in the morning.

Q. And who was there then?

A. It would have been Eldon. Mr. Elliott.

Q. Did he ordinarily do that?

A. Yes.

Q. All right. So if you make a quote to somebody by Friday, if they don't come in by 5:00 Friday or -- when did you close on Friday?

A. 5:00.

Q. All right. So if they didn't come in by 5:00 on Friday, then to hold that quote, they had to come in Saturday morning

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when Mr. Elliott was there?

A. That's right.

Q. Now, was the body shop open on Saturday, or just Elliott?

A. Just for the Ryder rental. No, the body shop was not open.

Q. Now, the customer comes in; and if you're there, you take their money.

A. That's right.

Q. And the quote is locked in, the reservation is made?

A. That's right.

Q. Now, how do you know that when the customer needs a particular Ryder truck that that truck will be there?

A. That's what the purpose of a deposit is. It guarantees them a truck. As soon as we get that deposit, then it's our job to, either within our market team or from our main office, call and tell them we need a certain size truck.

Q. Now, what do you mean "market team"?

A. There is three of us in our market team in the Junction City area. There is two dealers in Junction City and one in Manhattan that is -- I'm not sure what division it is, but that is our market team.

Q. So there is another Ryder rental outlet in Junction City?

A. Yes that's right

A. Yes, that's right.

Q. And what's the name of that?

A. It's at Waters' Hardware.

Q. And where is that in relation to where you are?

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A. It's probably 3 miles from where we are.

Q. End of town?

A. Yes.

Q. So it would be north of you?

A. It is more northeast of us.

Q. And then Manhattan is up the road a bit?

A. Manhattan is 25 -- 25 to 30 miles to the north of us.

Q. And there is just one in Manhattan?

A. One Ryder dealer, yes.

Q. So if you're short a truck, then you can call the other two members of your team market and they'll help you out?

A. Yes.

Q. And run a truck down to you?

A. Or we go get it.

Q. Now, on Friday afternoon of April 14, did you take a phone call from a customer that identified himself as Kling?

A. Not on Friday afternoon, no.

Q. What day did you do it?

A. It was on Friday morning.

Q. Friday morning. All right. And just tell me what you remember about that conversation.

A. I remember that when he called in, he asked about renting a Ryder truck. I remember that he told me he was going to be going to Omaha, Nebraska. When I asked him the size of truck that he was interested in, he asked me how many pounds does a

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15-foot truck hold.

And with that, I had to get up and walk around my desk to the chart that was hanging on the wall to see how many pounds a 15-foot truck would hold.

I noticed that it would hold -- I think it was something like 3400 pounds. I came back to the phone and I told him it would hold around 3400 pounds.

He then --

Q. All right. Go ahead.

A. He then said, "I need a truck that will hold 5,000 pounds."

I again got up and walked around and noticed that he would need a 20-foot truck -- would accommodate him. And I came back and I told him this.

Q. This chart you're looking at, Ms. Beemer: It had how much these trucks would hold?

A. That's right.

Q. Did it also have like two-bedroom house, three-bedroom house, or something like that on it?

A. We have that. I don't know that it's on that chart. We have a -- another chart that shows a 10-foot truck will hold so

many rooms, a 15-foot truck will hold so many. You know, each truck tells how many size -- or how many rooms each size will hold. I'm not sure if it's on that chart or not.

Q. All right. Well, let's just stop there for a minute and ask you about some exhibits here that have been admitted into

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evidence. I want to show you Government's Exhibit 300. There is a little monitor there in front of you, TV screen.

We'll take it out of the cellophane first so we can all see it.

Do you recognize what that is?

A. Yes. That's the body shop.

Q. Now, looking at this picture, can you tell where your office was?

A. I can't see it real well, but my office is -- as I'm looking at the picture, it's to the right of the big garage door. There is a little door.

Q. Right there in the corner?

A. Right there in the corner, yes.

Q. All right. Let's kind of zoom in on there.

Are you right here?

A. Yes. That's right.

Q. That's the office?

A. Yes.

Q. Now, over here, are these Ryder trucks that you have ready

to rent?

A. What was your question, sir?

Q. Over here.

A. Yes. Yes.

Q. Can you see -- now, they look to be different sizes?

A. That's right.

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Q. You've got at least one large one or maybe two large ones over here. Is that right?

A. That's right.

Q. And that looks like it's got that overhang.

A. That would be a 15-foot.

Q. That's a 15-foot?

A. If they have the overhang. The overhangs are the 15-feet.

Q. I can't tell for sure, but that's certainly a larger truck than these, isn't it, right here? I really can't tell.

Let's see if we can get a little closer for you. Is that better?

A. Yes. I believe those four right there are 10-foot trucks.

Q. All right. And then you've got a pickup down there?

A. That's right.

Q. Is that a Ryder pickup?

A. No. I have no idea what pickup that is.

Q. Now, these other cars around here, back over here and so forth: Are those cars you're working, or wrecked cars? What

are those.

A. Just basically cars for parts and stuff. They're wrecked cars.

Q. And then along here: Do you have that many customers' cars parked there at one time?

A. Those are mostly employees' cars. There might be some customers'; but I know there is probably two or three of those,

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because I see my car and I know I see a couple other employees' cars there.

Q. Where do customers from your observation in the past normally park? Along here?

A. They can park there. They can park behind where our cars are at, facing this way. I don't know how to show you.

Yeah. Right in there. They can face that. They come in -- a lot of times they'll park over here like you see this area over here. Right there. Yeah. Right in there.

Q. All right. Now, here's an exhibit, No. 301, Government's Exhibit 301. This is a lot closer view, isn't it, of the body shop?

A. Yes, it is.

Q. And again, here's the office that you were talking about.

A. That's right.

Q. Is that right?

A. Uh-huh.

Q. Okay. I'm going to show you now Government's Exhibit 302.

Can you see that, or do you want me to -- zoom in?

A. I can see that.

Q. All right. Now, this is your office?

A. That's right.

Q. Or the company's office?

A. I'm sorry?

Q. The company's office?

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A. Right. The company's office.

Q. Now, you would sit here in this chair where there seems to be some kind of red jacket over it?

A. That's right.

Q. All right. And so if somebody walked in this door, then you were right there. Is that correct?

A. That's correct.

Q. And is this the reservation system over here to Ryder?

A. Yes. That's the computer system.

Q. Now, here's Government's Exhibit 303. This is another view of the office, isn't it?

A. Yes, sir.

Q. Now, where -- in this picture, this chart that you went to look at that told you how much in pounds these trucks would hold: Is that shown in this picture?

A. Yes, it is.

Q. Where is that?

A. It's -- do you see the chart with -- or the picture with the Ryder truck?

Q. Yes.

A. It's that chart right there, yes.

Q. So you got up and walked around and looked at that?

A. That's right.

Q. Now, does this pretty much look like the way your office looked back in April of '95?

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A. Pretty much, yes.

Q. Now, this is Government's Exhibit 304, which has been admitted into evidence, Ms. Beemer. And what is this?

A. This is also the office.

Q. And it's kind of a view looking off to what?

A. Off to the --

Q. Your right hand or left hand.

A. To my right hand.

Q. Did you have any more dealings on the phone or in person with a customer known to you as Kling on Friday other than what you've told these ladies and gentlemen?

A. No, I didn't.

Q. When you came to work on Monday, did you learn that Kling had come in and left some money?

A. Yes, I did.

Q. And how did you learn that?

Q. And how did you learn that?

A. The reservation was laying on my desk for me to post on the calendar board.

Q. And did you do that?

A. Yes, I did.

Q. Now, without going in -- well, you looked at this form, then.

A. Yes.

Q. And did that form tell you that he had paid the \$80 or paid something larger than that?

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A. I believe it said he paid the entire amount.

Q. Which would have been what?

A. I believe it was \$280 and some-odd cents.

Q. Now, from your experience -- you hadn't been working there too long then, had you?

A. No, sir.

Q. About six months?

A. That's right.

Q. Your experience is what, usual, or unusual, for a customer to come in and just pay the whole amount?

A. Oh, that's usual.

Q. All right. So you knew that the customer had paid the amount and would be by to pick up the truck.

A. That's right.

Q. Now, did you make this notice on the board that you talked about earlier?

A. Yes, I did.

Q. And what did you write on the board?

A. I wrote "Kling, 20-foot truck" -- or "20" and then the symbol for foot, and I circled it.

Q. Did you have a 20-foot truck on the lot that day?

A. Yes, we did.

Q. So you didn't have to call one of your others?

A. Not that I -- I don't recall calling. I know we did have a 20-foot truck. I don't recall that we called for that.

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Q. Now, Monday, April 17, how many trucks did you rent?

A. I --

Q. And by "rent," I mean somebody came by and picked up the truck.

A. I'm really not sure how many. I don't recall for sure how many rented out that day.

Q. Excuse me just a moment, Ms. Beemer. I'm going to change glasses here.

Would it help you recall that, Mrs. Beemer, if I were to show you a memorandum of an interview with the FBI agents where that specific subject was discussed?

A. I'm not sure.

Q. Well, let me hand it to you and see if it does.

Now, just read to yourself, please, particularly if you'd kind of look at that third paragraph there on the first page.

A. Okay.

Q. Does that refresh your memory?

A. I hadn't remembered it. I don't recall it, but it's -- it's very possible I could have rented another truck.

Q. Well, let me ask you on May 8, 1995, you didn't tell two agents -- special agents of the FBI that you rented two trucks that day and the first one was rented by Christine Deloge?

A. Yes -- like I said, I don't recall -- I don't recall what trucks were rented that day, but it's very possible.

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Q. All right. And that was a truck to go to Michigan, wasn't it?

A. Yes. That's what it says.

Q. And then -- that truck was picked up at 8:20 a.m.?

MR. MENDELOFF: Objection, your Honor. The witness testified she doesn't recall.

THE COURT: Sustained.

MR. JONES: I'll rephrase it.

BY MR. JONES:

Q. Did you tell the FBI agent on May 8, 1995, that the truck had been picked up at 8:20 a.m.?

A. Again, that's what it says. I don't recall saying it, but

it did.

Q. And then do you recall whether there were any other transactions after that other than Mr. Kling?

A. No, there were no other transactions after Mr. Kling picked his truck up.

Q. Now, during the day, you had one customer come in for the body shop. Is that correct?

A. Again, I don't -- I don't remember. I mean that's been a long time ago, and I at this point -- I don't remember who came into the shop on that day as far as other customers.

Q. All right. Well, on May 8, 1995, did you advise the special agents of the FBI that a customer had come in by the name of Bernice Hoefer?

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A. Where is that at? I don't see that.

Q. Look at the top of page 2.

A. To be honest, I don't even know who Bernice Hoefer is. I really don't recall. I just don't recall.

Q. Did you have any deliveries from Millesons Auto Parts that day?

A. It's very probable. We have deliveries from Millesons probably every day.

Q. Do you remember how many you had that day?

A. No, I don't. I don't recall.

Q. As you recall it today -- and I recognize it's two years

later -- there wasn't much activity at Elliott's on Monday, was there, or was there? April 17.

A. I really don't recall. I mean that has been two years ago, and I just don't recall.

Q. Were you interviewed by the agents of the FBI concerning the business activity on April 17?

A. In this interview? Is that the one we're talking about?

Q. Certainly that one, but any others that you can think of.

A. On April 17?

Q. Uh-huh. Yes.

THE COURT: I think there is some confusion. Are you asking was she interviewed on April 17?

MR. JONES: No. I'm sorry.

BY MR. JONES:

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Q. Were you interviewed by special agents of the FBI concerning the amount of business activity at Elliott's which occurred on April 17? Not the interview but the activity.

A. I really don't remember what all the FBI agents interviewed me over.

Q. Now, do you remember how many trucks you rented on Tuesday, April 18?

A. No, I don't.

Q. What percent of the Ryder rental agency work that you all did there in the spring of '95 was military-oriented?

A. I would say probably 75 percent --

Q. I'm sorry.

A. -- is military.

Q. And that would be because Fort Riley was nearby?

A. That's right.

Q. These are people coming in or moving out?

A. That's right.

Q. Soldiers?

A. That's right.

Q. Now, the rest of your business, then: Did any of it come from Kansas State University, or was it just local?

A. Most of it is local, because there is a Ryder dealership in Manhattan that would accommodate for most of the K State callers.

Q. And in the spring of 1995, do you have an opinion when

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these military would come in to make their cash deposit, would they ordinarily be dressed in some kind of military outfit?

A. It varies. They could. A lot of them come in in military attire. Some of them come in in civilian clothes.

Q. Okay. And the military attire would be what?

A. Anybody from fatigues to -- I'm not really that knowledgeable on military attire, but most of the time fatigues.

Q. Was it common, or uncommon, for them to be dressed as

civilians when the military people came in?

A. It's common.

Q. Would it be common for them to be dressed as civilians?

A. Like I said, they come in both ways.

Q. All right. Now, on April 17, did the customer that you knew as Kling appear to claim his Ryder truck?

A. Yes, he did.

Q. And about what time was that?

A. It was after 4:15 in the afternoon.

Q. And who was with you in the office?

A. I really don't recall any -- well, I do. Tommy Kessinger was taking a break at that time.

Q. And what do we mean "taking a break"?

A. The body shop people have two breaks, one midmorning and then the other one -- they have it in the afternoon, and a lot of it depends -- the time depends on lot on what they're doing

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at the time.

Q. Now, Mr. Kessinger was an employee there?

A. Yes. He was a mechanic.

Q. So he was in the body shop?

A. At that time, yes.

Q. Yes. I'm referring to that time. So you're there in the office and Mr. Kling is coming in and Mr. Kessinger is there.

A. That's right.

Q. Where was Mr. Kessinger standing or sitting?

2. Where was Mr. Rosenberg standing or sitting.

A. He was sitting in the first chair just to my right.

Q. All right. Now, just a moment ago, you were shown a photograph; and let me ask you if you can tell me which of these chairs he was sitting in, if it was one of these chairs.

This is Government's Exhibit 304.

A. Actually, it's the chair that is cut off in that exhibit.

You can't see the entire chair.

Q. All right. You're talking about this chair here?

A. That's right.

Q. And what was he doing?

A. As I recall, he was eating popcorn.

Q. And what were you doing? Working?

A. Working, yes.

Q. Now, how did you know when Kling came in?

A. It was determined either by him saying he was there to pick up a truck or by my asking, "Are you Mr. Kling?" I don't

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really recall how, but it was determined.

Q. Did he have anyone with him?

A. Yes, sir, he did.

Q. And who was that?

A. I don't know who he was. It was just another man.

Q. All right. Did they come in together?

A. Yes, sir, they did.

Q. Did you see how they got there?

A. No, I didn't.

Q. So you don't know whether they walked, or drove, or somebody dropped them off?

A. No, sir, I don't.

Q. All right. Now, these two individuals come in, and where do they come to?

A. They just came straight to the counter.

Q. All right. Both of them?

A. That's -- yeah. They were both in the office. I know Mr. Kling came up to the counter. I really don't recall what the other guy -- he was in there, but I don't really recall where he was standing exactly.

Q. Did you ever see the second fellow sit down?

A. No. I don't remember seeing that.

Q. Did Kling sit down?

A. Not that I can recall, no.

Q. And do you have a memory of whether both of them were in

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front of you or one of them was to the side?

A. I know Mr. Kling was in front of me. I'm really not sure just where in the office the other gentleman was at.

Q. All right. And at that time, what did you estimate Mr. Kling's height to be?

A. I estimated it to be around 5' 10", 5' 11", about the height of my husband.

Q. And what is your husband's name?

A. My husband's name is Daryl.

Q. And how tall is he?

A. He's around 5' 10", 5' 11".

Q. Now, how was he built?

A. There again, he was medium to slender build, which was kind of like my husband, also.

Q. What type of haircut did this individual have?

A. It was a very short, military-type haircut.

Q. Do you remember any of his facial features?

A. No, I do not.

Q. Have you been able to identify him -- well, have you been able to identify him?

A. No, I have not.

Q. Now, were you shown a photo spread?

A. Of whom?

Q. Of different men.

A. No, I wasn't.

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Q. All right. You told the FBI you could not identify him?

A. That's right.

Q. All right. So Kling is at the counter, and what happens next?

A. The first thing I have to do is get certain information to do the open agreement.

Q. And what information do you ask for?

A. I had to get a destination address and his driver's license information.

Q. And what did he say or do?

A. I would have asked him to verbalize his -- the address, because that is something that I do not take off of driver's licenses; because with military and such, they're not usually the proper address.

Q. Some kind of permanent residence?

A. Right.

Q. All right. Maybe where their mother and dad live?

A. That's right.

Q. All right. So now, the customer is to give you that orally?

A. On the address, yes.

Q. Right. All right. Go ahead. And did Kling do that?

A. Yes, he did.

Q. And what address did he give?

A. I believe it was 428 Maple in -- I can't recall. It was

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either in -- I think it was in Omaha, Nebraska.

Q. Now, was that his permanent address, or the address he was going to?

A. What I would have asked him for would have been his destination address.

Q. Okay. And then what did you ask next?

A. Then I would have had to ask for his driver's license.

Q. And do you have a specific recollection of whether you saw Kling's driver's license or not?

A. I don't specifically recall him handing it to me; but it's policy, it's procedure. I always get the licenses, and I'm sure I did.

Q. All right. Now, did have you a policy then to make a photocopy of the license, stick it in the Xerox machine, or something?

A. No, sir, we don't.

Q. All right. So if Kling handed you the license, what would you have done with it?

A. I would have typed the information right from the license onto the computer.

Q. All right. And you've satisfied yourself that that information is on the computer in this Kling transaction, haven't you?

A. Yes.

Q. So you got it one way or the other?

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A. Again, I don't specifically recall him handing it to me, but I'm sure he did.

Q. Then what would you have asked him next?

A. What do you mean?

Q. Well, what did you ask him next? Anything?

A. After I got the driver's license information?

Q. Yes.

A. Then I would have -- it would have been the time to print the agreement. There would have been no more other information to get.

Q. And did you that?

A. Yes, sir.

Q. And the agreement is printed up, and then what?

A. And then there is a safety inspection that has to be done on the truck, and that was done.

Q. Wait a minute. Let's just stop there for a moment. Who does the safety inspection?

A. No one particular person.

Q. Let me rephrase it. Who did it on the Kling transaction?

A. I handed the sheet to Eldon Elliott.

Q. Now, had he come in then, or did you call him?

A. He was there. I don't recall whether I went and got him or whether he just appeared in the office for some reason. He was there for some time.

Q. All right. So what do you do when he's there with respect

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to the safety transaction -- or the safety inspection?

A. I give him the sheet and he goes out and does the walk-around, marks down whether there is any damages on it, and brings it in, and then it -- either before he does that or

brings it in; and then it -- either before he does that or afterwards -- there is really not one way or the other -- then Mr. Kling would have had to initial -- there is four safety rules, and he would have had to sign the safety inspection sheet.

Q. Now, when Mr. Elliott went out to inspect the truck, did he go back to this back lot where the truck is, or is the truck somewhere else?

A. No.

MR. MENDELOFF: Objection, your Honor. Foundation as to where Mr. Elliott went if she wasn't there.

THE COURT: All right. Rephrase it.

MR. JONES: Sure.

BY MR. JONES:

Q. Ordinarily, when you do the safety inspection -- and incidentally, do you do them on all the transactions?

A. Yes, sir.

Q. What is the usual practice and procedure as to where the truck will be when it's inspected?

A. The truck is right out front.

Q. Now, how does it get out front?

A. Someone goes up on that hill and brings it down.

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Q. Now, do they do that before the customer arrives?

A. Sometimes, but probably on this -- and I don't know for sure, but my guess is that it was done as soon as the customer

walked in. But I'm not sure of that.

Q. And ordinarily, who would have gotten the truck?

A. It could have been probably one of two people. It could have been Eldon, or it could have been Fernando Ramos.

Q. Who is he?

A. He's one of the workers in the body shop.

Q. Do you have a specific recollection?

A. No, I don't.

Q. All right. But in any event, the truck was outside for Mr. Elliott to inspect?

A. That's right.

Q. And you say he did that, or at least he left?

A. At least his initials are on the sheet; so I guess yes, he did it.

Q. After he left, did he come back? When I say "he left," I meant when he went outside?

A. He came back in and handed me the safety inspection sheet, yes.

Q. And what did you do with it?

A. Then I would have torn our copy out, given Mr. Kling the copy of the open agreement and the safety inspection sheet that was his and put it in a Ryder folder and handed it to him.

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Q. Now, when Mr. Elliott came back in, did he say anything?

A. Not that I recall, no.

Q. All right. And who actually handled the transaction of getting Kling's initials on the safety form?

A. I do that. I hand that to them, normally before they do the safety inspection sheet. I mean before they do the safety inspection of the truck, I usually have them do that, but not all the time. A lot of it depends on whether whoever goes to get the truck can take the sheet, bring it down, do the walk-around, and then bring it in and then have the customer initial. You know, there is not one set way. It can be done a couple different ways.

Q. After Mr. Kling initialed it, whenever it occurred, what happened next?

A. He would have initialed it. He would have signed it, and then he would have -- I would have given him all the proper information -- agreement and that, and he would have left.

Q. Now, who would give him the keys?

A. Most times, the keys are just left in the truck.

Q. Now, are you familiar enough with the operation to know whether it was the practice then to give the customer one key or two keys?

A. I don't know that we have more than one key. What -- maybe I'm not sure what you're talking about.

Q. Sure. It's confusing. Let me try again: Did the customer

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get a duplicate key?

A. No.

Q. And the same key operates the ignition?

A. Usually, there is just one key on the key ring.

Q. And that operates the ignition and the locks, and so forth?

A. Yes.

Q. All right. Now, what is the practice, or what was the practice at your place of business in April of '95 with respect to putting fuel oil (sic) in the truck?

A. The trucks are always filled with fuel by the customer who used it last. They have to be topped off with fuel, or we charge so much a gallon to fill it up; so the customers are told they have to have it filled, topped off, when they bring it back.

Q. And this truck that Kling got: What was the size of the gas tank, if you know?

A. I'm not sure. I think it's 60 gallons.

Q. Is the customer given anything else?

A. They're given the agreement, the safety inspection sheet, and the keys.

Q. All right. And let's go back now specifically to Kling: While Mr. Elliott was outside, did Kling and this other fellow that was with him have any conversation?

A. Not that I recall, no.

Q. Did they do anything like smoke a cigarette, walk around,

pick up a magazine? Anything like that?

A. Not that I noticed, uh-uh.

Q. What would you say, Ms. Beemer, was the maximum amount of time that the customer was in there?

A. I'm just going to guess. It was probably 5 minutes or so. Maybe -- maybe between 5 and 10. I really don't recall for sure.

Q. Well, was there anything unusual about this transaction that would make it longer or shorter than the ordinary one?

A. No, not -- just the fact that he did not have a telephone number.

Q. Okay. What's the length of time of the ordinary transaction?

A. If everything goes okay, probably -- to be truthful, I've never timed it. I really don't know.

Q. Okay. Did this second fellow leave with Kling?

A. Yes. They both walked out the door at the same time.

Q. Now, what was Kling wearing?

A. I don't know.

Q. What was the second fellow wearing?

A. I don't know.

Q. Did he have anything on his head, the second fellow?

A. I don't know.

Q. Do you recall whether he had a cap?

A. No, I don't recall that.

Q. Do you recall testifying to the grand jury?

A. Yes, I do.

Q. And at that time, did you tell the grand jurors that you recalled he had a cap on?

A. What I did at the grand jury was characterize John Doe 2, and what I thought that meant was to characterize him according to what I have seen on TV, what everybody had said that he had looked like, what it (sic) was read in the paper, what was seen on the TV. It was not a description from my memory. It was a characterization.

Q. When you testified in front of the grand jury, are you telling me that your testimony was not based upon your personal knowledge and memory recall but something you had seen on television?

MR. MENDELOFF: Objection, your Honor. Vague. What part of the grand jury testimony?

THE COURT: Overruled.

BY MR. JONES:

Q. You may answer the question, ma'am.

A. Would you repeat the question, please.

Q. Sure. I want to be sure I understand you. Are you telling me that when you testified under oath in front of the grand jury down in Oklahoma City and you were describing the second fellow, this John Doe 2, that you were giving a description based upon something you had seen on television, rather than

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what you specifically remembered personally?

A. No. What I was doing -- the grand juror asked me to characterize John Doe 2. I had already said several times in my grand jury testimony that I did not know what this guy looked like. I had said that probably three times, so they already knew I could not describe him.

When he said, "characterize him," to me that meant according to what I had seen on TV, what I had read in the paper, what, you know, he had been perceived to look like, but not from my memory.

Q. Well, what did you tell the grand jury? Do you remember?

A. I don't -- I don't know what you're talking about.

Q. Well, what did you tell them about John Doe 2, or this second person?

A. As far as when I characterized him?

Q. Yes.

A. No. I don't recall. I'd have to see it.

Q. Well, let me ask you if you told the grand jury, "He was probably as tall as Mr. Kling. He was much huskier, more of a stocky-built gentleman. He was darker complected, but he -- I'm sure he was not Hispanic or anything, but he was darker complected and just much larger."

A. That was what I had seen on TV through the media, and what I had read in the paper about him. That was not --

Q. My question was is that what you told the grand jury?

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A. Yes.

Q. Now, when you testified and answered those questions before the grand jury down in Oklahoma City on August 1, 1995, did you tell the grand jury that any part of your testimony under oath was based upon what you had seen on television?

A. It was the way the question was put to me. I took "characterization" as meaning not my memory, not what I knew him to look like. I was not in any way telling the grand jury what from my memory I knew him to look like.

Q. Well, Ms. Beemer, wasn't the question asked of you by that grand juror, "Would you remember if he was tall, or short, or medium? How would you characterize it?"

A. Characterize. There again, I was characterizing according to what I have seen.

Q. Well, my question was did the grand juror ask you, "Would you remember if he was tall, or short, or medium? How would you characterize him?"

A. Yes, he asked me that.

Q. Does that question suggest to you that the grand juror wanted to know what your memory was?

A. But I had already said three or four times that I didn't know what he looked like.

Q. I apologize. My question may not have been clear. When the grand juror asked you, "Would you remember if he was tall, or short, or medium; how would you characterize him," didn't

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you think he was asking for your memory?

A. No, I didn't.

Q. Do you know -- when he said, "What do you remember," did you think he was talking about what you remember from television?

A. By the characterization.

Q. Yes. My question was did you understand that when he used the word "remember," he wanted to know what your personal memory was, or what you had remembered from television?

A. Like I said, I had already told him that I didn't know what he looked like; so I don't know why he would ask me what I would remember, when I had already said I couldn't remember what he looked like.

Q. Well, did you tell him you were relying on television?

MR. MENDELOFF: Objection, your Honor. Asked and answered.

THE COURT: Overruled.

THE WITNESS: I'm sorry.

BY MR. JONES:

Q. Did you tell him you were relying on television?

A. No.

Q. Was it your understanding that this grand jury was sitting to hear evidence from witnesses concerning who might be responsible for the Oklahoma City bombing?

A. I knew that.

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Q. Was your lawyer there with you outside?

A. I believe that Reed Robison was outside, yes.

Q. Well, what is your memory today? Is that an accurate description of the second person, or not?

A. I do not have a memory of the second person.

Q. You just remember there were two of them?

A. That's right.

Q. And how certain are you that there were two of them?

A. I'm very certain.

Q. That's not something you formed from television.

A. No, sir.

Q. And you're very certain.

A. That's right.

Q. All right. Now, on April 19, did you receive any information that your business might be associated in some way with the Oklahoma City bombing?

A. Yes, I did.

Q. And how did that information come to you, ma'am?

A. I received a phone call around 2:15 -- that would have been on Wednesday, the 19th, from some lady. She did not identify herself. And she just wanted to know if I rented a truck to -- I'm sorry -- if I rented and gave me the truck number, such and such a truck number. And I asked her who would have rented it, where did it go? She didn't know.

She just said, "All I know is the truck number."

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And I checked in my file, and I found that I had rented that truck number on the 17th to a Bob Kling.

Q. Now, was this lady calling from Ryder?

A. She didn't say. I really don't know who it was.

Q. She didn't identify herself?

A. No, she didn't.

Q. All right. What was the next thing that you heard that might connect Elliott's Body Shop with the investigation?

A. We received -- I received a call from Scott Crabtree, and he said that there was a possibility that the truck that I had rented had been used in the Oklahoma City bombing and nobody was supposed to leave the office; that they would -- he would be there in probably about half hour, 45 minutes.

Q. And did he identify himself as being with the FBI?

A. Yes, he did.

Q. Now, before he arrived, did you have a conversation with anybody else concerning this transaction other than the lady on the phone?

A. Specifically what? I mean, I told Eldon and I -- I'm not sure who all I told -- that nobody was supposed to leave; that there was a chance that the truck that we rented out was used in the bombing.

Q. Now, when you told this to Mr. Elliott, did he indicate or

by any way that he already knew that, or were you telling him for the first time?

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A. As far as I remember, I was telling him for the first time.

Q. Did you tell anybody else before Mr. Crabtree got there?

A. Everybody was made aware that nobody was supposed to leave; so I don't specifically recall going out and telling everybody, but nobody was able to leave before the FBI got there.

Q. Did you have a discussion with Mr. Elliott or Mr. Kessinger concerning the transaction itself; that is, the rental of the truck?

A. Not that I recall, no.

Q. Let me ask it slightly differently: Do you remember having a conversation before Mr. Crabtree got there with Eldon Elliott about the Kling transaction?

A. I don't remember talking to him about it. Like I said, there really wasn't a whole lot of time to do a lot of talking. Once we heard, everybody was just kind of walking around in a daze, and there wasn't a lot of conversation.

Q. Was there any conversation?

A. Not with me and anybody, no.

Q. Well, so you didn't have any such conversation with Mr. Elliott?

A. Regarding what?

Q. The transaction of the Kling vehicle.

A. I really don't recall if I did or not.

Q. Now, with Mr. Kessinger, did you have a description with him -- a discussion with him concerning the transaction?

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A. I think everybody was just trying to, you know, recall the -- what had happened and -- but nothing specific.

Q. What do you mean everybody was trying to recall what had happened?

A. The people in the shop specifically, you know, Eldon and I, you know, but nothing specific as far as, you know, anything about that particular transaction. We knew that it was that transaction, but there was nothing specific that was being said.

Q. Well, if you weren't discussing it specifically, how were you discussing it?

A. I don't know that I was. I mean, I don't recall really having a conversation with anybody other than just nobody can leave because we -- the FBI is coming down.

Q. I thought just a moment ago you said everybody was discussing it.

A. Everybody was told not to leave.

Q. Oh. All right. Well, now to go back to my question, which was did you discuss the Kling transaction in any way with Mr. Kessinger before Special Agent Crabtree arrived.

A. Not that I can recall.

Q. Now, Mr. Crabtree arrived and interviewed you?

A. Yes, he did.

Q. All right. And who else did he interview?

A. I know he interviewed Eldon and he interviewed Tommy, and

Vicki Beemer - Direct

I'm really not sure if he interviewed anybody else or not.

Q. Where did he interview you?

A. It was in Eldon Elliott's office.

Q. And that's right around the corner, isn't it?

A. Yes.

Q. All right. Who was present besides Mr. Crabtree, if anyone?

A. I don't think anyone was.

Q. And what did you tell him had occurred?

A. I really don't recall. It's been two years ago. I don't know exactly what I told him.

Q. Well, what part of it do you remember?

A. I really don't remember anything. I know I had a conversation with him, but I don't specifically recall what I said to him.

Q. All right.

MR. JONES: May I approach?

THE COURT: You may.

BY MR. JONES:

Q. Ms. Beemer, ma'am, I've handed you a document. Would you just take a minute to look at it and see if it refreshes your

just take a minute to look at it and see if it refreshes your memory about your conversation with Mr. Crabtree on April 19.

A. Okay.

Q. Does that refresh your memory?

A. I remember some of the stuff, but I don't recall all of it.

Vicki Beemer - Direct

Q. All right. Now, when you were in there with Kling on Monday and this other fellow, did you have any additional conversation with him other than what you've testified to already?

A. I remembered that when I wrote his -- or typed his birth date down, I made the comment to him. His birth date was April 19, 1970, I believe, and this was on April 17. And I said to him, "You have a birthday in a couple of days."

Q. That's all?

A. That's all I recall saying, yeah.

Q. Okay. And is that something you ordinarily do with customers if you notice something unusual about their birthday?

A. I do talk to customers like that, yes.

Q. Okay. Now, do you remember when you testified before the grand jury whether you were uncertain as to whether you had made that comment or not?

A. Uncertain about whether I made --

Q. The comment about the birthday.

A. I don't remember -- I think I always knew I made that comment.

Q. Did you have another conversation with Mr. Crabtree that day?

A. Another conversation with Mr. Crabtree?

Q. Yes.

A. On the 20th -- on the 19th -- what day are we talking

Vicki Beemer - Direct

about?

Q. On the 19th.

A. You mean other than at the office?

Q. Yes.

A. I really don't remember if I had it that night, or the next day.

Q. All right. Well, let me ask it another way: When was the next time you talked with Mr. Crabtree of the FBI about Mr. Kling's transaction?

A. It could -- you know, I'm not sure of the dates. I did talk to him a couple times. I'm not sure of the dates.

Q. Where did the second interview take place?

A. I did one interview out at the CID office at Fort Riley, Kansas.

Q. Is that the Criminal Investigation Division?

A. Yes.

Q. And you recall when that was in relation to the interview that you had with him in Mr. Elliott's office?

A. We were taken to the CID office on the 19th, and then we

were back on the morning of the 20th.

Q. And what happened at the CID office?

A. I was fingerprinted, and I don't recall if Mr. Crabtree interviewed me again that night or not. I know I got home about 8:00, and I don't really remember if he interviewed me then or the next day when we were out there.

Vicki Beemer - Direct

Q. Now, when you went out there, was Mr. Elliott there?

A. Yes, he was.

Q. And the agents, of course, from the FBI?

A. Uh-huh.

Q. Now, were you going to meet with a sketch artist out there?

A. We did that on the morning of the 20th, I believe.

Q. And do you remember what time on the 20th?

A. I had to be out there around -- it was around 4, 4:30 in the morning.

Q. All right. And that was when Mr. Elliott was there?

A. That's right.

Q. Now, just before you went in there or while you were there, did you have a conversation with Mr. Elliott concerning whether one of the individuals involved in the transaction on Monday, the 17th, had a beard?

A. Yes, sir.

Q. And what was that conversation?

A. We were setting (sic) there waiting. Mr. Kessinger was in

with the sketch artist, and Eldon said to -- my husband and I were standing -- or setting there and he said, "That guy had a beard, didn't he," or "Didn't that guy have a beard," something to that effect.

Q. And what did you respond?

A. I just said, "I have no idea."

Q. Now, when he said, "That guy had a beard, didn't he," or

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words to that effect, who did you understand he was referring to?

A. I didn't -- I really didn't know who he was referring to. He could have been referring to either one. We were out there to do sketches of both, and I really don't know who. He did not specify who he was talking about.

Q. All right. You were being asked to help a sketch artist draw what?

A. Draw a sketch of John Doe 1 and John Doe 2.

Q. All right. Now, who gave them those names?

A. I don't know. I guess the FBI.

Q. Now, when you were in front of the grand jury and you were answering the question concerning the appearance of John Doe 2, I believe you indicated to me that you were relying upon what you had seen on television.

A. I was relying on media and sketches, the sketches that were drawn, and just such as that.

Q. Were you also relying upon details that had been offered or told to you by Mr. Kessinger?

A. No -- no, I wasn't.

Q. Well, specifically, Mrs. Beemer, the details that you offered before the grand jury concerning John Doe 2: Did they have their source in things Tom Kessinger told you and things that you overheard Mr. Kessinger say and your observations of the sketch on John Doe 2 in the media?

Vicki Beemer - Direct

A. And a lot of it was from TV. I don't really recall hearing Tommy talk about what this guy looked like.

MR. JONES: May I approach, please?

THE COURT: Yes.

BY MR. JONES:

Q. Ma'am, I've handed you a document consisting of three pages -- doesn't it?

A. Uh-huh.

Q. Don't tell me what it is. I have on the second page put a bracket with a pencil. Do you see that?

A. Yes, I do.

Q. Just read that to yourself, please. Just the part in brackets.

A. Okay.

Q. Now, does that refresh your memory that you heard and formed your opinion and testimony to the grand jury on John Doe

2 on things that you heard Mr. Kessinger tell you, things you overheard from him about John Doe 2, and things you had seen on the media?

A. There again, I don't recall Tommy telling me anything about him.

Q. Okay. Have you told an assistant United States attorney, specifically Scott Mendeloff, that you formed your testimony in front of the grand jury on John Doe 2 based upon what Mr. Kessinger said to you, what you overheard him say, and from

Vicki Beemer - Direct

the media?

A. Like I said, I don't recall Tommy saying that much at all.

THE COURT: No, please. That isn't the question.

THE WITNESS: Okay. Would you repeat the question, then.

BY MR. JONES:

Q. Yes. Would you just take a moment and look at the third page of that document.

A. The third page?

Q. Yes. Just look at it. Don't tell me what it is.

Now, I will reask my question: Did you tell Assistant United States -- well, I'm sorry. Did you tell Assistant Attorney -- I'm sorry -- Special Attorney to the United States Attorney General Scott Mendeloff that when you testified in front of the grand jury about John Doe 2, you were relying upon

what Mr. Kessinger told you about him, things you had overheard Mr. Kessinger say about him, and what you had seen in the media?

A. Yes. That's what it says.

Q. I'm not asking you what it says. I'm asking you if you told Mr. Mendeloff that.

A. I'm just not sure. I mean it says that; so obviously, I did.

Q. All right. Now, when you were talking with Mr. Crabtree on the 20th out at the CID office, did you also meet with the FBI

Vicki Beemer - Direct

sketch artist?

A. Yes, I did.

Q. And did you assist in the drafting of a sketch?

A. When I went in to the sketch artist, he asked me if there was any additions or deletions, and I said I -- I had none to offer.

Q. Did he show you the sketch?

A. Yes, he did.

Q. I'm going to show you what's been admitted into evidence as Government's Exhibit 317, ma'am.

Well, just a moment. This is in evidence. I'm sorry.

THE COURTROOM DEPUTY: 317 is not in evidence.

MR. JONES: Okay.

BY MR. JONES:

Q. Then I'm just going to show this to you -- well, and to the

Q. THEN I'M JUST GOING TO SHOW THIS TO YOU WELL, AND TO THE Government and the Judge, but not to the jury.

I'm showing you Government's Exhibit 317. Do you see that where you are?

A. Yes, I do.

Q. Is this the sketch that was shown to you?

A. I believe it was.

Q. Just a moment, please. And then I'm going to show you Government's Exhibit 320, which is also not yet in evidence. Were you shown this sketch?

A. Yes.

Vicki Beemer - Direct

Q. And when were you shown the sketch as reflected in Government's Exhibits 317 and 320?

A. It would have been on the 20th of April.

Q. Now, this sketch was prepared at the time you were shown it?

A. Yeah. It was already prepared.

Q. All right. Who had been in with the sketch artist before you?

A. Both Tommy and Eldon.

Q. So you were the third one?

A. Yes.

MR. JONES: I move the admission of Government's Exhibit 317 and 320.

MR. MENDELOFF: Objection, your Honor. There is no

foundation for this question. There is no foundation
whether --

THE COURT: Well, it's what she looked at. That's her
testimony. The objection is overruled.

MR. JONES: May I publish, your Honor?

THE COURT: Yes.

BY MR. JONES:

Q. I've shown you, Ms. Beemer, Government's Exhibit 317. Do
you see that?

A. Yes.

Q. Now, this is the sketch they showed you?

Vicki Beemer - Direct

A. Yes.

Q. Now, what was the question asked of you when this sketch
was shown?

A. They did ask me whether there was anything I wanted to add
or delete.

Q. What did you say?

A. I said I didn't know if I've ever seen him before.

Q. Now, is that what you told them?

A. That's what I recall telling them, yes.

Q. Did you tell them, "I don't have anything to add or
delete"?

A. Yes, I'm sure I did tell them that.

Q. That's what you said just a moment ago.

A. Yeah.

Q. Before the sketch was admitted.

All right. So I'll ask you, please, what did you tell them when they showed you 317.

A. I told them I had nothing to add or delete.

Q. Did they ask you a similar question with respect to 320?

A. I really don't remember if they did or not. I know -- I do know they did of the first one, but I don't really -- and they very well could have. I don't remember that.

Q. Okay. Well, I'll ask you now: Do you have anything to add or delete from 320?

A. No, I do not.

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MR. JONES: May I have back the three-page document?

Your Honor, Mr. Mendeloff and I have an agreement that the document, the three-page document the witness was shown, has been marked as McVeigh's Exhibit C69.

MR. MENDELOFF: Yes, your Honor.

BY MR. JONES:

Q. Now, did you have any further contact with Kling after April 19?

A. No, I did not.

Q. Did you have any further contact with him after April 17?

A. No, I did not.

Q. Are you able to identify him today?

A. No, I can't.

Q. Did there come a time, Ms. Beemer, when you were shown a photograph of a cap in reference to this case?

A. I really don't know. Could have been. I really don't recall.

Q. You say you do not recall?

A. No, I don't.

MR. JONES: I believe that's all the questions I have of Ms. Beemer at this time, your Honor. Thank you.

THE COURT: Mr. Mendeloff?

MR. MENDELOFF: Thank you, your Honor.

One moment, please, your Honor.

THE COURT: Yes.

Vicki Beemer - Cross

CROSS-EXAMINATION

BY MR. MENDELOFF:

Q. Ms. Beemer, let me just ask you a few questions. I don't have many for you.

You said you walked over to a chart to look and see about the weights when Mr. Kling called you on Friday, the 14th of April. Do you remember that?

A. Yes, sir.

Q. And that was a chart on the wall that you pointed out during your testimony on direct examination. Remember that?

A. That's right. Uh-huh.

Q. Let me show you what's been marked Government's Exhibit 306.

MR. MENDELOFF: May I approach, your Honor?

THE COURT: Yes.

BY MR. MENDELOFF:

Q. What is Government's Exhibit 306? It should be in the sheaf of papers there.

A. It's the rental truck chart that I looked at.

Q. It's a photograph of it?

A. A photograph of it.

Q. Does it fairly and accurately depict the way that chart looked that day?

A. Yes, it does.

MR. MENDELOFF: We move the admission of Government's

Vicki Beemer - Cross

Exhibit 306, your Honor.

MR. JONES: No objection.

THE COURT: Received.

BY MR. MENDELOFF:

Q. Now, Ms. Beemer, you were asked a question about a letter, or a three-page document. Do you see that in the papers in front of you?

A. Yes, I do.

Q. What is that marked? It's got a defense exhibit marker on it.

A. Yes. It's marked, what, C69?

Q. C69. And just so we can get an identification, can you just tell us what that document is? Is it a letter?

A. It's a letter, yes.

Q. Who is it addressed to?

A. It is addressed to two different people: Jeralyn Merritt and Ronald Woods.

Q. All right. And Jeralyn Merritt at the -- at an address that's listed there?

A. Yes. It's 303 East 17th Avenue, Suite 400, Denver, Colorado.

Q. Who is it from?

A. Who is it from?

Q. Right.

A. From you.

Vicki Beemer - Cross

Q. And that's the -- that's the document that Mr. Jones showed you when he was talking to you about the various things regarding the grand jury testimony. Is that right?

A. That's right.

Q. Okay. Now, Ms. Beemer, let me just ask you a couple of questions that relate to another transaction that you had.

Do you remember having a truck rental transaction with a man named Michael Hertig?

A. Yes, I do.

Q. And how many times did you have with Mr. Hertig?

Q. And now many transactions did you have with Mr. Hertig?

MR. JONES: If the Court please, I object to as beyond the scope.

THE COURT: Sustained.

MR. MENDELOFF: Your Honor, if I may be heard, I can explain the reason we're going through this.

THE COURT: I understand. The objection is sustained.

BY MR. MENDELOFF:

Q. Are you familiar --

THE COURT: Call her as a witness.

MR. MENDELOFF: Yes, your Honor. I understand.

BY MR. MENDELOFF:

Q. Are you familiar with Michael Hertig?

A. Yes, I am.

Q. On April 17, 1995, when you handled the rental transaction, was it Michael Hertig that came in to rent the truck?

Vicki Beemer - Cross

MR. JONES: If the Court please, I object to this as beyond the scope.

THE COURT: No. Overruled.

BY MR. MENDELOFF:

Q. Was it Michael Hertig that came in to rent the truck?

A. No, it was not.

Q. How certain are you of that?

A. I'm certain.

Q. Now, you were asked certain questions about -- on direct

Q. Now, you were asked certain questions about -- on direct examination about the nature of your business on April 17, the kind of people came in to rent trucks, what kind of people came in to handle business in the body shop. Remember those questions?

A. Uh-huh.

Q. And I believe your testimony was that you didn't remember what happened during those days -- during that day; is that right?

A. Not specifically, no.

Q. Now, are there times when people come into Elliott's Body Shop to ask questions and they don't actually engage in any business; they just ask questions about various things having to do with your business?

A. Yes.

Q. People come in and ask questions about the body shop itself?

Vicki Beemer - Cross

A. Uh-huh.

Q. People come in and talk to Eldon or other people in the body shop about trucks -- or cars being serviced there?

A. That's right.

Q. People come in and ask questions about rental?

A. That's right.

Q. Truck rental?

A. Uh-huh.

Q. And in those instances, there are not records created, no receipts made --

A. That's right.

Q. -- of those kinds of visits. Is that right?

A. That's right.

Q. Also, do people come in and ask questions, talk to employees, people that -- people from around the Junction City area? If they want to come in and ask a question or talk to somebody they know at Elliott's Body Shop, they come in?

A. That's right.

Q. Now, let me just make one thing clear: On the 17th of April, when you handled that transaction, who were the employees from Elliott's Body Shop that were present in the office during any point during the course of that transaction?

A. It would have been Tom Kessinger.

Q. And?

A. And myself. Eldon Elliott.

Vicki Beemer - Cross

Q. No one else?

A. Those are the main ones I can remember, yes.

Q. And that transaction began, do you know, at about what time?

A. The computer -- I got into the computer at 4:19.

Q. And you know that from looking at the --

A. It's on the agreement.

Q. Agreement.

Now, when you entered that computer, had Mr. Kling been standing in the office for any period of time?

A. No, he had not.

Q. How long at the longest was Mr. Kling standing in the office before you entered into the computer?

A. Maybe 30 seconds.

Q. Immediately entered --

A. Immediately after he walked in.

Q. Why is it that you remember that?

A. Because I don't recall him standing there and waiting around. I wasn't on the phone that I recall, and there was no other people in there doing business; so as soon as he walked in the door, it was time to get his agreement done so he could get on his way.

Q. And you remember Mr. Kling walking in the door with this second person; is that right?

A. That's right.

Vicki Beemer - Cross

Q. Now, just to clarify one point, you were asked questions about the beard comment that Eldon Elliott made to you at Fort Riley.

A. That's right.

Q. And I believe you said two different versions of what he said. What is your best memory of what he said to you?

A. "That guy had a beard, didn't he?"

Q. And you don't know which guy he was talking about?

A. No, I don't.

MR. MENDELOFF: Nothing further, your Honor. Thank you.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. JONES:

Q. Ms. Beemer, did Mr. Hartig (sic) rent a truck from you that week?

A. Mr. Hertig?

Q. Hertig.

THE COURT: Did you say "that week"?

MR. JONES: Yes, sir.

THE WITNESS: Yes, sir.

BY MR. JONES:

Q. Meaning the week of April 17.

A. Yes, I believe he did.

Q. Did you say you're familiar with him?

Vicki Beemer - Redirect

A. Yes, I am.

Q. Would you recognize a picture of him?

A. Yes, I think I would.

Q. Let me show you what's been marked as -- just for yourself and -- well, and for the Government, not for the jury yet --

McVeigh Exhibit C38. Who is in that picture?

A. That's Michael Hertig.

Q. Okay.

MR. JONES: Move the admission of C38.

MR. MENDELOFF: Objection as to relevance, your Honor.

This photo doesn't have a mustache on it, and I don't believe that reflects the way that man looked that day.

THE COURT: Well, I don't know about a mustache. The witness just said that's Michael Hertig. On the basis of her testimony, it's admissible.

BY MR. JONES:

Q. All right. Now -- now, I'm going to show you -- this is the sketch you saw earlier that was shown to you by the FBI.

A. Yes, it is.

Q. Do you see any similarity between Mr. Hertig and the sketch?

A. There could be similarities, but I know the difference because I do know Mike Hertig.

Q. I understand. Well, your answer was you're familiar with him. Do you know him personally?

Vicki Beemer - Redirect

A. He actually lived in Chapman, where I live.

Q. So you would remember?

A. That's right.

Q. Okay. Have you reviewed your FBI 302's in this case,

Ms. Beemer?

A. No, I haven't.

Q. You've never looked at them?

A. No, I haven't.

Q. Did you ever tell the FBI in any interview that you knew Michael Hertig?

A. I don't -- I don't remember.

Q. Did you ever tell them that Michael Hertig had been in?

A. I don't recall that, either.

Q. Did you tell the grand jury you knew Michael Hertig?

A. I don't know.

Q. Did you tell them that he had rented a truck there?

A. I don't know.

Q. Now, do you remember the Hertig transaction?

A. Specifically, no.

Q. Do you remember whether there was anybody with Mr. Hertig?

A. No, I don't.

Q. So you don't remember whether there was one person or two people with Mr. Hertig?

A. No, I don't.

Q. But you remember there was another person with Kling?

Vicki Beemer - Redirect

A. Yes, I do.

Q. All right. Now, the comment that you made -- well, let me ask you this: When Mr. Hertig rented his truck, did you make any comment to him about being married longer than he had been

any comment to him about being married longer than he had been alive?

A. I very well could have.

Q. Well, did you?

A. I don't recall specifically.

Q. Well, did you tell the grand jury that you couldn't recall whether you had made the same statement to the customer known to you as Kling?

MR. MENDELOFF: Objection. That's not proper impeachment, your Honor.

THE COURT: Well, I'm not clear about the question.

MR. JONES: Let me rephrase it.

BY MR. JONES:

Q. When you testified in front of the grand jury on August 1, 1995, in response to a question from the grand jury -- actually, from the prosecutor, did you say that you were not certain for sure if you told Hertig the comment about the birth date?

MR. MENDELOFF: Objection, your Honor. As to Hertig, or Kling?

MR. JONES: No, Kling.

MR. MENDELOFF: I object, because this question hasn't

Vicki Beemer - Redirect

been directly asked.

THE COURT: Well, it is uncertain what the question is.

MR. JONES: Let me rephrase it.

THE COURT: All right.

BY MR. JONES:

Q. Ms. Beemer, on August 1, 1995, was the following question asked of you and did you give the following answer:

Quote -- or "Question: Did you make any remark to him," referring to Kling, "in addition to talking about the fact that he had a birthday coming in two days?

"Answer: I sometimes with customers, if they have birth dates that are anywhere in the date of the same age as my children -- I will make a comment of that.

"Question: Did you mention that to him?

"Answer: I don't remember for sure if I did."

Was that your testimony?

A. Yes, sir.

Q. All right. Now, did you make a practice of telling customers that you've been married longer than they've been alive?

A. I have, yes.

Q. So that would be something that any customer might hear?

A. It could be.

Q. What would cause you to make such a comment?

Vicki Beemer - Redirect

A. And not specifically -- I mean there is different comments I make in regards to birthdays. It's just conversation with

the customer.

Q. Is there anything specific that triggers it, like a birthday, to the customer?

A. A lot of times, the year, or if the birthday is in a couple of days, you know, just something, just to kind of set the -- you know, make them comfortable.

Q. Now, how tall is Mr. Hertig?

A. I really don't know.

Q. How much does he weigh?

A. I don't know that.

Q. And do you know what kind of build he has?

A. He's a slender build.

Q. And do you know how old he is?

A. No, I don't.

Q. Do you have an opinion of how much he looks like Mr. McVeigh?

A. Not really, no.

Q. Now, do you know Mr. Hertig well enough to know that in April of 1995 he was wearing a mustache?

A. Yes, he was.

Q. Did Kling have a mustache?

A. I can't put a face to Mr. Kling.

Q. So you don't know whether he had a mustache, or not?

Vicki Beemer - Redirect

A. No, I don't.

Q. All right. Now, you know this is Mr. McVeigh?

A. Yes, I do.

Q. All right. Are you able to tell us that Mr. McVeigh is Robert Kling?

A. No, I can't.

MR. JONES: No further questions.

THE COURT: Mr. Mendeloff?

We're running short on time; but obviously in view of the redirect, you can ask your question to which I sustained an objection.

MR. MENDELOFF: Thank you, your Honor.

RE-CROSS-EXAMINATION

BY MR. MENDELOFF:

Q. Can you say Mr. McVeigh is not Mr. Kling?

A. No, I cannot.

Q. Let me show you Government's Exhibit 331.

MR. MENDELOFF: This is not in evidence, so we just need this shown to the witness.

BY MR. MENDELOFF:

Q. Ms. Beemer, do you recognize the person in this photograph?

A. Yes, I do.

Q. How -- and who is that person?

A. It's Michael Hertig.

Q. How does that compare to the way he looked when he came in

to rent the truck in April of '95?

A. That's the way I remember him.

Q. How does that photo compare to the photo you just reviewed when Mr. Jones showed you a picture of Mr. Hertig?

A. He didn't have a mustache in the one that Mr. Jones showed me.

Q. But in April of '95, he did?

A. Yes, he did.

Q. Let me ask you to look in your sheaf of papers in front of you, Government's Exhibits 327, 328, 329 and 330.

A. Okay.

Q. Are those rental documents relating to the two rentals from Mr. Hertig?

A. Yes.

Q. And were they made and maintained in the normal and ordinary course of your business at Elliott's Body Shop?

A. Yes, they were.

MR. MENDELOFF: Move the admission of those exhibits, your Honor.

MR. JONES: Fine. No objection.

THE COURT: They're received.

BY MR. MENDELOFF:

Q. Before we get into questions on that, let me show you another exhibit --

THE COURT: Well, I think we'll come back to this tomorrow, if you've got more than that.

MR. MENDELOFF: Thank you, Judge.

THE COURT: You'll be back at 9:00 tomorrow morning.

THE WITNESS: Okay.

THE COURT: Please do not discuss your testimony with anyone.

THE WITNESS: Yes, sir.

THE COURT: No lawyer, no investigator, no other witness.

THE WITNESS: Yes, sir.

THE COURT: You're excused till 9:00 tomorrow morning.

Members of the jury, you're going to be excused till 9:00 tomorrow. I ran just a little overtime, but I thought we might be concluding with the witness. Obviously, we didn't. So I try not to keep you overtime because we don't pay you overtime, but we appreciate your cooperation.

You're, of course, during this time, free to go your own ways; and, of course, you're not free with respect to what you watch on television, listen to on the radio, read in magazines or newspapers, or discuss with others. So please be careful to avoid anything that would violate your oath to decide on the law and the evidence presented to you at the trial. You're excused till 9:00 tomorrow morning.

(Jury out at 5:03 p.m.)

MR. MENDELOFF: Your Honor, I neglected to move in Government's Exhibit 331; so I will be doing that in the morning.

MR. JONES: Which one is that, Scott?

MR. MENDELOFF: The photograph of Michael.

MR. JONES: No objection.

THE COURT: We'll do it in the morning with the jury

here.

On exhibits, did you accomplish the redaction of that exemplar of the handwriting of Terry Nichols? Has that been done? I don't remember the number of the exhibit.

MR. HARTZLER: Yes. We just removed some pages and kept the same exhibit number.

THE COURT: It's all -- it is agreed now, the form of it?

MR. NIGH: It is, your Honor.

THE COURT: All right. Good.

Recess, 9:00.

(Recess at 5:04 p.m.)

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PLAINTIFF'S EXHIBITS

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C38	10428	10428			

* * * * *

REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 22d day of May, 1997.

Paul Zuckerman

Bonnie Carpenter