

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 66)

PROCEEDINGS BEFORE THE HONORABLE RICHARD P. MATSCH,

Judge, United States District Court for the District of Colorado, commencing at 1:30 p.m., on the 6th day of November, 1997, in Courtroom C-204, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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APPEARANCES

PATRICK RYAN, United States Attorney for the Western District of Oklahoma, Assistant U.S. Attorney for the Western District of Oklahoma, 210 West Park Avenue, Suite 400, Oklahoma City, Oklahoma, 73102, appearing for the plaintiff.

LARRY MACKEY, SEAN CONNELLY, BETH WILKINSON, GEOFFREY MEARNS, JAMIE ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the U.S. Attorney General, 1961 Stout Street, Suite 1200, Denver, Colorado, 80294, appearing for the plaintiff.

MICHAEL TIGAR and RONALD WOODS, Attorneys at Law, 1120 Lincoln Street, Suite 1308, Denver, Colorado, 80203, appearing for Defendant Nichols.

* * * * *

PROCEEDINGS

(Reconvened at 1:30 p.m.)

THE COURT: Be seated, please.

(Jury in at 1:30 p.m.)

THE COURT: All right. Next, please.

MR. MACKEY: Your Honor, the United States would call Tejal Bhakta, and Mr. Mearns will question her.

THE COURT: All right.

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

(Tejal Bhakta affirmed.)

THE COURTROOM DEPUTY: Have a seat, please.

Would you state your full name.

THE WITNESS: Bhakta Tejal.

THE COURTROOM DEPUTY: Spell your last name, please.

THE WITNESS: B-H-A-K-T-A.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Good afternoon, Miss Bhakta.

A. Good afternoon.

Q. I'm going to ask you to keep your voice up so we can all hear you.

A. Okay.

Q. How old are you, ma'am?

A. 24.

Q. And where were you born?

A. India.

Q. And when did you come to live in the United States?

A. '86.

Q. 1986?

A. Uh-huh.

Q. Where do you live right now?

A. Corpus Christi, Texas.

Q. How long have you lived in Corpus Christi?

A. Two months.

Q. What do you do for work in Corpus Christi?

Tejal Bhakta - Direct

A. I work at the Comfort Inn, managing the motel.

Q. Who owns that Comfort Inn in Corpus Christi where you work?

A. My husband and me.

Q. What do you do there now?

A. Management.

Q. Where were you working in 1994?

A. Tucumcari, New Mexico.

Q. And what were you doing in Tucumcari?

A. Motel business, managing.

Q. What was the name of the motel that you managed?

A. Buckaroo Motel.

Q. When you worked there in 1994, were you familiar with how guests registered at that motel?

A. Yes.

Q. Could you describe that process for us?

A. The guests come in, and I -- walk in and I say, "Hi, how are you?" to the guest. And guest told me if they want smoking or non. And I give the card and guest fill out name and address, and I fill out the rest of the thing.

Q. And after the guest and you filled out that card, was that registration card then kept as a business record by the motel?

A. Yes.

Q. What I'd like you to do, if you would look in that folder that is sitting in front of you and look for Government Exhibit 86.

Tejal Bhakta - Direct

Do you have that in front of you?

A. Yes.

Q. Do you recognize that document?

A. Yes.

Q. And what is it?

A. It's a registration card from the Buckaroo Motel.

Q. And how do you recognize that as a registration card from the Buckaroo Motel?

A. My handwriting and my initial.

Q. And was that registration card kept in the normal course of business by the Buckaroo Motel?

A. Yes.

MR. MEARNS: Your Honor, we'd offer Government Exhibit 86.

MR. WOODS: No objection.

THE COURT: 86 received.

MR. MEARNS: Your Honor, may I publish it to the jury?

THE COURT: Yes.

BY MR. MEARNS:

Q. Now, if you would, Miss Bhakta, tell us what the information that we see on that guest registration card.

A. The day, the name of the customer, the address.

Q. Okay. Could you tell me -- I'm sorry, let me ask you questions as you go. What is the name that the customer gave you?

Tejal Bhakta - Direct

A. Joe Havens.

Q. Could you spell that last name?

A. H-A-V-E-N-S.

Q. And then who wrote that information there, the name and the street number and the city?

A. The customer.

Q. And then if you would go down to the bottom of the registration record, below where it says, "Please pay in advance." What information did the customer write there?

A. Make of car, license number, and the state.

Q. And who wrote the other information there?

A. I did.

Q. And can you tell us in the lower left-hand corner what the date is.

A. 10-25-94.

Q. That's October 25, 1994?

A. Uh-huh.

Q. Do you remember -- and who -- I'm sorry, whose initial is that over in the right-hand corner?

A. Yes.

Q. And that T is for Tejal?

A. Yes.

Q. Do you remember this individual, Joe Havens?

A. No.

MR. MEARNS: Your Honor, at this time we'd like the

Tejal Bhakta - Direct

Court to publish the stipulation that the handwriting in the name and address section was written by Mr. Terry Nichols.

MR. WOODS: Yes, your Honor, that's our stipulation, that it's Mr. Nichols' handwriting.

THE COURT: All right. It is agreed, then, what's written beside name, street number, city, state, and ZIP code is his handwriting.

BY MR. MEARNS:

Q. Are you able to read the address and -- the street address?

A. R2, Box 28 . . . I cannot read the city.

Q. And can you tell the initials next to the state?

A. Kansas.

Q. Now, if you would, if you would look in your folder again for Government Exhibit 226.

Do you have that in front of you?

A. Yes.

Q. And do you recognize that document?

A. Yes.

Q. How do you recognize that document?

A. This is a card from the Buckaroo Motel, and the handwriting is my brother.

Q. What is your brother's name?

A. Rakesh.

Q. Could you spell that?

A. R-A-K-E-S-H.

Tejal Bhakta - Direct

Q. And do you recognize that as a business record that was kept by the Buckaroo Motel?

A. Yes.

MR. MEARNS: Your Honor, we would offer Government Exhibit 226.

MR. WOODS: No objection.

THE COURT: Received, 226.

BY MR. MEARNS:

Q. Miss Bhakta, could you tell us which information was written by the guest.

A. The name, street number, city, and the state and ZIP code.

Q. And what information was written by your brother?

A. Date, room number, rate, tax, amount, and the initial.

Q. And could you read for us the name of the guest?

A. Tim McVeigh.

Q. And is that spelled M-C-V-E-I-G-H?

A. Uh-huh.

MR. MEARNS: No further questions, your Honor.

THE COURT: Mr. Woods, do you have any questions?

MR. WOODS: Yes, your Honor, just a couple.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good afternoon.

A. Good afternoon.

Tejal Bhakta - Cross

Q. My name is Ron Woods. I've been appointed by the court to help Terry Nichols. Can you tell the jury where your motel is located or was located then at that time in Tucumcari?

A. It's located on -- the New Mexico?

Q. Yes.

A. 1315 West Tucumcari Boulevard.

Q. Now, is that on the main thoroughfare?

A. Main --

Q. That goes through town?

A. Yes.

Q. And what main highway goes through there?

A. 40.

Q. Okay. That's Interstate 40?

A. Uh-huh.

Q. Okay. Now, this card that was in front of you dated December 13, are you able to tell what year that was?

A. '94.

Q. Okay. And then the other one that was dated October 25 in the name Joe Havens, are you able to tell what year that was?

A. '94.

Q. So it's two months apart?

A. Yes.

MR. WOODS: Okay. Thank you very much.

MR. MEARNS: Your Honor, I just omitted one thing. I failed to mention that there was a stipulation with respect to

Tejal Bhakta - Cross

226 that the handwriting for the guest is Timothy McVeigh.

MR. WOODS: Yes, your Honor, we would stipulate that's Mr. McVeigh's handwriting.

THE COURT: All right. Again, it's stipulated, meaning that it's agreed to.

MR. MEARNS: The witness may be excused.

THE COURT: Are you excusing this witness, I take it?

MR. WOODS: Yes, your Honor.

THE COURT: You may step down. You're excused.

Next witness, please.

MR. MACKEY: Thank you, your Honor. Miss Helen Mitchell. Mr. Ryan will question.

THE COURT: Okay.

THE COURTROOM DEPUTY: Raise your right hand, please.
(Helen Mitchell 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: Helen May Mitchell, M-I-T-C-H-E-L-L.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Ryan.

MR. RYAN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. RYAN:

Q. Good afternoon.

Helen Mitchell - Direct

A. Good afternoon.

Q. How are you?

A. Just fine.

Q. You injured your foot since you've been here in Denver this week?

A. That's . . . morning before last.

THE COURT: In this building?

THE WITNESS: What did you say?

THE COURT: In this building?

THE WITNESS: No. Hotel.

MR. RYAN: Insurance company's already been notified, your Honor.

THE COURT: Thank you.

BY MR. RYAN:

Q. Mrs. Mitchell, where do you live?

A. Herington, Kansas.

Q. And are you married.

A. Yes. No, I'm a widow now.

Q. How long were you married?

A. I was married for about 42 years.

Q. Do you have children?

A. Yes.

Q. How many children?

A. Five children.

Q. Grandchildren?

Helen Mitchell - Direct

A. Seven grandchildren.

Q. I'm not supposed to ask this. How old are you?

A. 70.

Q. And what do you do for a living?

A. I'm a bookkeeper at the lumberyard.

Q. And would you tell us about that employment.

A. Well, the lumberyard belongs to my brother and his family. It's a corporation, and I'm just the bookkeeper.

Q. Do you have any duties as the bookkeeper beyond that of the lumberyard?

A. Well, I've been doing most of the recording of the mini storage that my brother and his son own. It's separate from the lumberyard.

Q. What are your duties in connection with the storage units?

A. Making out the contracts and receiving the money.

Q. What do you call that storage unit?

A. Herington Mini Storage.

Q. How long have you lived in the state of Kansas?

A. I lived in the state of Kansas? All my life. 70 years.

Q. Okay. Let me show you something that's already in evidence. It's Exhibit 2045. And if you would -- you have a little marker there on the desk. If you would take that and

LITTLE MARKER THERE ON THE DESK. IF YOU WOULD CARE THAT AND
press it against the screen below your desk there.

A. Underneath.

Q. And circle Herington for us.

Helen Mitchell - Direct

A. Right -- oh, wait a minute. That won't go where it's
supposed to.

Why don't that go where it's supposed to go?

Q. I think we've got the idea. That's all right.

A. I hit it that time.

Q. Okay. Thank you. And just by point of reference, do you
see the name of Geary Lake there on the map?

A. Yes, I do.

Q. About how far is it from Herington to Geary Lake?

A. It's about 18, 20 miles, I think.

Q. What is the population of Herington?

A. Around 2600.

Q. And how long have you lived in Herington?

A. Since 1941. 46 years.

Q. Decided to settle down there?

A. I think so.

Q. I take it you're familiar with the town?

A. Yes, I am.

Q. Are you familiar with Tim's Amoco gas station?

A. Yes.

Q. You know where it is in Herington?

A. Yes.

Q. How about the Pizza Hut near Highway 77?

A. Yes.

Q. The Herington Industrial Park, are you familiar with that?

Helen Mitchell - Direct

A. Yes.

Q. And is one of the businesses of your brother there at the
Herington Industrial Park?

A. Yes, that's where the mini storage is.

Q. And about how far is that from town, from the center of
Herington?

A. From the center of Herington, probably about a mile and a
half, maybe a mile and three-quarters.

Q. And are you familiar with 102 (sic) 2nd Street?

A. I know where it is, yes.

Q. Let me show you a map of Herington that has not been
admitted into evidence, and it is Exhibit No. 97. You see it
there on your screen?

A. Yes.

Q. Have you looked at this map prior to coming here to court
today?

A. Yes.

Q. And it is -- is it an accurate map of Herington?

A. Yes, it is.

Q. And of the -- and of the four places designated on the map?

A. Yes.

MR. RYAN: Your Honor, we would offer Exhibit No. 97.

MR. WOODS: No objection.

THE COURT: 97 is received.

BY MR. RYAN:

Helen Mitchell - Direct

Q. Now, if you would, Mrs. Mitchell, would you put a circle -- there's a pretty good arrow there -- put a circle around the Terry Nichols residence at 1092nd Street.

A. Be about right in here. Where I ended it.

Q. And about how far is -- was Mr. Nichols' home from the Tim's Amoco gas station, about how many blocks?

A. About eight blocks.

Q. Six blocks to the west and two blocks north?

A. Right.

Q. All right. Now, if we could turn your attention over there to the storage sheds that you act as bookkeeper for. About how far are those storage sheds from the Pizza Hut there on the other side of the highway?

A. About a third of a mile.

Q. Now, let me show you what has been marked as Exhibit No. 1951. It's not been admitted into evidence. And do you recognize that exhibit?

A. Yes, I do.

Q. And what is that?

A. That's Tim's Amoco station.

Q. Is that an accurate depiction of that Tim's Amoco?

A. Yes, it is.

MR. RYAN: Your Honor, we would offer Exhibit 1951.

MR. WOODS: No objection.

THE COURT: 1951 received.

Helen Mitchell - Direct

BY MR. RYAN:

Q. Now, Mrs. Mitchell, are you familiar with the fact that there is a pay telephone there at Tim's Amoco?

A. Yes.

Q. And would you circle that pay telephone for us, please.

Thank you. Now, let me show you another exhibit that has not been admitted into evidence, Exhibit No. 92. Can you see that pretty well?

A. Yes.

Q. What are we looking at here in Exhibit 92?

A. It's the industrial park.

Q. And do you recognize that as a true and accurate photograph of the aerial (sic) park taken from above?

A. Yes.

Q. Excuse me, the industrial park.

A. Yes.

MR. RYAN: Your Honor, we would offer Exhibit 92.

MR. WOODS: No objection.

THE COURT: Received, 92.

BY MR. RYAN:

Q. Mrs. Mitchell, you indicated that you perform some bookkeeping business and signed leases for these storage sheds. Could you circle for the jury the location of the storage sheds in this photograph.

And you also indicated a moment earlier in your

Helen Mitchell - Direct

testimony that the Pizza Hut was about a third of a mile from the industrial park.

A. Right.

Q. Could you circle -- is the Pizza Hut shown here on the map?

A. Yes, it is.

Q. Okay. Could you circle that for us.

Now, is there a pay telephone there at the Pizza Hut?

A. Yes, there is.

MR. RYAN: Okay. Now -- that's all I need that exhibit for. Thank you.

BY MR. RYAN:

Q. Now, let's talk a little more specifically about your duties regarding the storage sheds. Tell us what your responsibility is in terms of leasing those storage sheds.

A. Well, they start out by asking them their name and their address; and usually we may only have one or two available. And if we do happen to have two available, ask how large they need, which unit they would need. And then just get information as to their address and telephone number and tell them how much it is.

Q. And where do you office?

A. In the same as the lumberyard.

Q. In town?

A. Yes.

Q. So people, if they want to rent a shed there at the storage

Helen Mitchell - Direct

shed location, they have to come to the lumberyard?

A. Yes.

Q. Now, if you would, tell the jury a little bit about the storage sheds: How many different units are there at Herington?

A. Not too sure exact number, but it's in the 20's, and we have different sizes.

Q. What are some of the different sizes you have?

A. The small -- we have four of them that are 7 1/2-by-10 and 8-foot high. And then we have 10-by-10 and 10-by-20's, and I think there's even a 15-by-30.

Q. Do you have a formal standard lease agreement --

A. Yes, we do.

Q. -- that people sign?

A. Yes.

Q. Let me ask you if after the bombing in Oklahoma City, whether the FBI came by and picked up a number of the leases

whether the FBI came by and picked up a number of the leases that you had copies of at your place of business?

A. They picked up one, yes.

Q. And do you recall that lease they picked up?

A. Yes.

Q. Let me ask you to look at Exhibit No. 88, which is not in evidence. And ask you if you can identify that lease.

A. Yes, that is the lease that I filled out for a Shawn Rivers on September the 22d, 1984 (sic).

Helen Mitchell - Direct

MR. RYAN: Your Honor, we would offer Exhibit No. 88.

MR. WOODS: No objection.

THE COURT: Received, 88.

BY MR. RYAN:

Q. My colleague tells me that you may have said the lease was in '84.

A. It's '94. I'm sorry, it is '94.

Q. Thank you.

A. I'm behind a few years. Sorry.

Q. That's all right. Now, let me see if I can get this a little closer. Nope.

MR. RYAN: Oh -- had it been admitted before I show her?

THE COURT: 88 has.

MR. RYAN: Make we have it on the screen, please.

Here we go.

BY MR. RYAN:

Q. Now, Mrs. Mitchell, would you tell us the date of this lease?

A. September 22, 1994.

Q. And who did the person leasing the -- entering into this lease tell you they were?

A. What they wanted?

Q. No; who did they say they were?

A. Oh, Shawn Rivers.

Helen Mitchell - Direct

Q. And is this your handwriting, or is the customer's?

A. No, this is mine.

Q. What address did the customer, Shawn Rivers, give you on September 22?

A. Route 3, Box 83, Marion, Kansas.

Q. And does it give a ZIP code there?

A. Oh. 66861.

Q. Now, which storage shed did you lease to Mr. Rivers?

A. No. 2.

Q. And what was the monthly cost of --

A. \$20 a month.

Q. Excuse me?

A. \$20 a month.

Q. Now, do you know how many months Mr. Rivers leased this shed for?

A. At the time, he leased it for four months.

Q. So that would be from September 22 until when?

A. January 22.

Q. Now, let's look at the second page of this exhibit, down at the signature block. Do you see that?

A. Yes.

Q. And do you recognize this as being the bottom half of the second page?

A. Yes.

Q. Now, whose signature is that on the left?

Helen Mitchell - Direct

A. That is mine on the left.

Q. And the signature on the right?

A. Is of Shawn Rivers.

Q. And did you watch Mr. Rivers sign the lease?

A. Yes, I did.

MR. RYAN: Your Honor, we would ask that the Court advise the jury of the stipulation with respect to the signature of Mr. Rivers here on Exhibit 88.

MR. WOODS: Yes, your Honor, we stipulate that's Mr. McVeigh's signature.

THE COURT: All right.

Again, we accept these agreements without the need for other proof, so it's stipulated that's Mr. McVeigh who wrote that.

MR. RYAN: Thank you, your Honor.

BY MR. RYAN:

Q. Now, did Mr. McVeigh pay in cash?

A. Yes, he did.

Q. And how much cash did he give you at that time?

A. \$80.

Q. Now, the following month, in October, did this same man come in again?

A. Yes.

Q. And what was the purpose of his second visit?

A. He wanted to renew it for another four months.

Helen Mitchell - Direct

Q. And how did that strike you?

A. A little unusual because --

Q. Why is that?

A. Normally they'll wait four months before they'll pay another four months. It was not that four months was unusual; it was just coming a month later.

Q. And how many months, again, did he renew it for?

A. For another four months.

Q. And did he pay in cash?

A. Yes, he did.

Q. And how much cash did he give you?

A. Another \$80.

Q. So now the lease is extended on Shed No. 2 through what date?

A. May 22, 1995.

Q. Now, did you generate any paperwork with respect to this renewal of the lease?

A. Yes, I did.

Q. Let me show you Exhibit No. 91. And can you identify this exhibit?

A. That's the receipt that I gave him at the time he came in to pay the other \$80.

MR. RYAN: Your Honor, we would offer Exhibit No. 91.

MR. WOODS: No objection.

THE COURT: 91 received.

Helen Mitchell - Direct

BY MR. RYAN:

Q. Now, again, for the benefit of the jury who is just now seeing the exhibit, tell us what this is.

A. This is a receipt that I gave to Shawn Rivers on January -- on October 22, which extended it to May 22, 1995.

Q. Now, let me show you another exhibit that has not been introduced. This is Exhibit No. 90. Can you identify that?

A. That's the recording that my brother made at the time, the first \$80, and then the second \$80.

Q. This is a business record you keep there in the ordinary course of your business?

A. That was his record, yes.

MR. RYAN: Your Honor, we would offer Exhibit No. 90.

MR. WOODS: No objection.

THE COURT: 90 received.

BY MR. RYAN:

Q. And again, explain for us, Mrs. Mitchell, what this exhibit portrays.

A. Well, the top part showing the contract was dated September 22, 1994, paying for four months, till January 22; and then on the bottom, extending from January 22 to May 22, the other \$80.

Q. Now, this record simply reflects the times and dates of payments --

A. Yes.

Helen Mitchell - Direct

Q. -- on this lease by Mr. Rivers?

A. Yes.

Q. Now, let me show you a picture which we have marked as Exhibit No. 93. Can you identify that for us?

A. Yes, I can. It's an aerial view of the mini storage from the west.

Q. And is it an accurate depiction of the mini storage?

A. Yes, it is.

MR. RYAN: Your Honor, we would offer Exhibit 93.

MR. WOODS: No objection.

THE COURT: 93 received.

THE COURT: 93 received.

BY MR. RYAN:

Q. Now, Mrs. Mitchell, can you identify where Shed No. 2 is on this photograph?

A. Well, it's on the back side. You can't see the door from this view.

Q. Could you put an arrow showing us approximately where it would be?

A. Right in there.

Q. Maybe we have a better photograph I can show you here in a second.

Let me ask you to look at Exhibit No. 94. Do you see that?

A. Yes.

Q. What is that?

Helen Mitchell - Direct

A. That's the east side of the mini storage showing the four small units.

MR. RYAN: Your Honor, we would offer Exhibit 94.

MR. WOODS: No objection.

THE COURT: Received.

BY MR. RYAN:

Q. Now, Mrs. Mitchell, if you would, can you identify for us where Shed No. 2 is located in this photograph.

A. Right -- oh, I'm sorry.

Q. It's the second door there from the left?

A. Yes.

Q. And how -- what is the size of this shed?

A. It's 7 1/2-by-10-by-8.

Q. It's 7 1/2 feet --

A. Wide.

Q. -- wide.

A. 10 foot deep.

Q. 10 foot deep, and how high --

A. 8 foot high.

Q. 8 foot tall. And let me -- finally my last exhibit is Exhibit No. 96, and let me ask you if you can identify that for us.

A. That's the empty No. 2 unit.

MR. RYAN: Your Honor, we move to offer Exhibit No. 96.

Helen Mitchell - Direct

MR. WOODS: No objection.

THE COURT: Received, 96.

BY MR. RYAN:

Q. And again, if you would, Mrs. Mitchell, tell the jury what they're looking at.

A. The open door to No. 2.

Q. At this time it's empty?

A. Yes.

Q. This is after the Oklahoma City bombing occurs --

Q. THIS IS AFTER THE OKLAHOMA CITY BOMBING OCCURS

A. Yes.

Q. -- is when this photograph was taken?

A. Yes, sir.

MR. RYAN: No further questions, your Honor.

MR. WOODS: Can we leave that picture up, please?

MR. RYAN: Sure.

MR. WOODS: Thanks.

Mr. Ryan, do you want to take your machine.

MR. RYAN: You want that?

MR. WOODS: No, just that picture.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Hi, Mrs. Mitchell. My name is Ron Woods. I'm one of the lawyers that's been appointed to help Terry Nichols. I want to thank you, you and your brother, Mr. Mueller, for answering our questions when we went out to talk to y'all about this unit.

Helen Mitchell - Cross

This unit that was rented by a Shawn Rivers that's pictured now, 7 1/2 feet wide; is that correct?

A. Yes, I'm quite sure that's what it is.

Q. And you've advised us that that door is only 3 feet wide; is that correct?

A. I don't know. I never measured it.

Q. Okay. You recall telling our investigator that the door was 3 feet wide?

A. I may have.

Q. Okay. Okay. Do you know of any physical way that a 4-foot-by-4-foot cube could fit into that door?

A. I wouldn't think so.

Q. Okay. Now, on that date, September 22 of '94, was a Thursday. Were you present that following week, which would be like the 29th and 30th? You office there in the lumber company; is that correct?

A. Yes.

Q. And the storage units are away from there?

A. Yes.

Q. Did you happen to go by those storage units on the weekend?

A. No.

Q. That following weekend?

A. No.

Q. Didn't see anybody moving some household furniture in there?

Helen Mitchell - Cross

A. No.

Q. Did you ever look inside that unit while it was rented?

A. I never have, no.

Q. Okay. Can you tell the jury what that floor is, what type of material?

A. It's a concrete floor.

Q. Okay. And those walls, front, back, and side, what kind of

material is that?

A. That's wafer board.

Q. And what do you mean by wafer board since you're in the lumberyard business?

A. It's the larger chips of wood glued together, instead of plywood, it's small chips.

Q. It's not real smooth, I take it, like laminated, I take it?

A. Not real smooth, no. But it can be varnished.

MR. WOODS: Okay. Thank you so much, Mrs. Mitchell, we appreciate it.

THE COURT: Anything else, Mr. Ryan?

MR. RYAN: One question, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. RYAN:

Q. Mrs. Mitchell, that doorway there to Shed No. 2 is wide enough for somebody to walk through --

A. Oh, yes.

Helen Mitchell - Redirect

Q. -- with sacks of feed or fertilizer?

A. Definitely.

MR. RYAN: Thank you.

She may be excused, your Honor.

THE COURT: May she be excused?

MR. WOODS: May be excused.

THE COURT: You may step down; you're excused.

Next witness.

MR. MACKEY: Thank you, your Honor, we'll call Sharri Furman, and Mr. Mearns will question her.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Sharri Furman 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: Sharri Deanne Furman, F-U-R-M-A-N.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Good afternoon, Miss Furman.

A. Good afternoon.

Q. Where do you live?

A. I reside in Brush, Colorado.

Q. And how long have you lived in Colorado?

A. Since the end of February.

Sharri Furman - Direct

Q. Where did you live before February 1997?

A. At Council Grove, Kansas.

Q. How long did you live in Kansas before moving to Colorado?

A. I was born and raised there.

Q. Are you married?

A. Yes.
Q. Do you have any children?
A. Three.
Q. Where do you work right now?
A. I work as a manager in a variety store there in Brush.
Q. How long have you worked at that store?
A. Since the end of February.
Q. What's the name of the store where you work?
A. Duckwall's.
Q. Did you work for Duckwall's before you moved to Colorado?
A. Yes, for a short period of time.
Q. When did you first start working for Duckwall's?

A. It was the end of September, '96.
Q. And was that in Kansas?
A. Yes.
Q. Was that in Council Grove, Kansas?
A. Yes.
Q. What did you do before working for Duckwall's?
A. I worked for Vernon Hager, doing bookkeeping and maintaining records and stuff for him.

Sharri Furman - Direct

Q. And where was that?
A. It was in Council Grove.
Q. At that time did Mr. Hager own and operate any businesses?
A. Yes. He had convenience store, Conoco deli shop, and he also owned Boots U-Store-It.
Q. Where does the name Boots come from?
A. It was a nickname given to him a long time ago.
Q. And you indicated that the gas station was a Conoco gas station?
A. Yes.
Q. Where was the deli shop located in relation to the gas station?
A. The deli shop was the gas station. And it was located on Main Street.
Q. Where did you work, actually, physically?
A. He had an office in his home, in the basement, and that's where I worked.
Q. And where was Mr. Hager's home in relation to these two businesses?
A. It was in residential district, and it was 314 Washington in Council Grove.
Q. What I'd like to do is show you what's been introduced in evidence as Government Exhibit 2045. And do you recognize that as a map of central Kansas?
A. Yes.

Sharri Furman - Direct

Q. Could you circle on that map where Council Grove is.
And back in 1994 and 1995, that's where you lived and worked?

WORKED:

A. Yes.

Q. When did you first start working for Mr. Hager?

A. '89. 1989.

Q. And you worked for Mr. Hager from then, 1989, up until 1996?

A. Yes.

Q. And tell us a little bit more about what you actually did for Mr. Hager.

A. I did bookkeeping. I maintained the records and stuff for the storage units. I did billing and stuff for the deli shop. I did billing and stuff for the storage, too. I did banking, if Mr. Hager was out of town. Answered phones. Just general office work.

Q. With respect to the storage facilities, did you also lease storage facilities, meet with customers to lease storage facilities?

A. Yes.

Q. What I'd like to do is there's a folder in front of you. If you'd look for Government Exhibits 100, 101, 102, 103, 104, and 105.

Do you have those in front of you?

A. Uh-huh.

Sharri Furman - Direct

Q. Have you seen those photographs before coming to court?

A. Yes.

Q. What are they, generally speaking?

A. Some of them are shots of the storage unit, and there is two aerials of Council Grove.

Q. Do those fairly and accurately depict the storage facility both from the air and the ground in 1994 and 1995?

A. Yes.

MR. MEARNS: Your Honor, we'd offered 100 through 105.

MR. WOODS: No objection.

THE COURT: They're received.

BY MR. MEARNS:

Q. Miss Furman, I'd like to begin first with 101.

A. Okay.

Q. And describe for us, then, if you would; as you describe it, there's an electronic pen there.

A. Uh-huh.

Q. Do you see the storage facilities --

A. Yes, I do.

Q. -- Boots U-Store-It? Could you put a circle around the storage facility.

And what is the road running just to the right of the storage facility?

A. That's 177, Highway 177.

Q. And you go up in the picture, which direction is that?

Sharri Furman - Direct

A. South.

Q. So we're facing south?

A. Uh-huh.

Q. What is then up at the top of the picture, the far south part of the picture?

A. That's Highway 56 runs up through here, and that's the downtown.

Q. Could you put a circle around downtown Council Grove.

And that's the intersection of what two highways again?

A. U.S. 56 and 177.

Q. What's located to the north of the storage facility; that is, if we could look farther to the bottom of that picture?

A. It's out of town. You head towards Manhattan. You head towards farms, nothing.

Q. Now, if we could show you Government Exhibit 100. If you would clear the pen, if you click it. There you go.

Do you see the storage facility there?

A. Yes.

Q. Could you put a circle around there for us.

And where's the town of Council Grove in this picture?

A. It's down here.

Q. So essentially we're looking north now in another aerial photograph?

A. Correct.

Sharri Furman - Direct

Q. Now, if you were heading from the storage facility there north of Council Grove back south towards Council Grove, where would you find the first public pay telephone?

A. It's at the Coastal Mart which is right here.

Q. Right there at the intersection of those two highways?

A. Right, uh-huh.

Q. If you'd look in the folder for Government Exhibit 106.

A. Okay.

Q. Do you have that?

A. Uh-huh.

Q. Did you recognize that photograph?

A. Yes.

Q. What is that?

A. That is the Coastal Mart in Council Grove.

Q. Does that fairly and accurately show the Coastal Mart in 1994 and 1995?

A. Yes.

MR. MEARNS: Your Honor, we would offer Government Exhibit 105 and 106.

MR. WOODS: No objection.

THE COURT: Received.

BY MR. MEARNS:

Q. A moment ago you told us about the pay phone at the Coastal Mart. Do you see it in the photograph?

A. Yes.

Sharri Furman - Direct

Q. Could you put a circle with your pen around the pay phone that you were just describing.

Thank you, Miss Furman.

Now, if we could turn back to Exhibit 102, 102.

Describe for the jury what is depicted in that photograph.

A. Okay. That's a picture of the storage units as we're looking at them from the highway.

Q. So we're looking east across the highway towards them?

A. Yes.

Q. How many storage units are there in Boots U-Store-It?

A. 47.

Q. And what are the range of sizes?

A. All the way from a 10-by-5 to a 10-by-26 -- 24. 10-by-24.

Q. Where is Mr. Hager's Conoco station and the deli shop in relation to this storage facility?

A. It's south into town, and when you get to the intersection, you take a left.

Q. You said there are 47 units in the storage facility?

A. Yes.

Q. How many different units or buildings are those 47 units?

A. Two. I mean three.

Q. Now, if we can look at Exhibit 103, please. Tell us what we see in that picture.

A. Okay. Now we're standing back on the hill behind the storage units and looking across towards the highway.

Sharri Furman - Direct

Q. And can you show us with your light pen the -- the three buildings, excuse me, that you mentioned.

A. Actually, there's four.

Q. Okay.

A. Sorry. Here's one. Here's two. Three, four.

Q. And you said -- is the photograph that we're seeing now taken on top of a hill?

A. Yes.

Q. How steep is that hill in relation to where the storage facilities are?

A. It's -- you'd have to climb it. You couldn't just walk up. It's pretty steep.

Q. And the road we see in the background just behind the storage facility, that's Highway 177?

A. Uh-huh.

Q. Now, what kind of storage facility business is it; that is, what kind of customers rent storage units?

A. We had all sorts of customers. We had just the average citizen. We had some businessmen that would rent every once in a while. Just depending. Whoever needed it.

Q. What were your responsibilities with respect to the storage facility business?

A. I had it all set up on a computer system. Each unit had its own file. If the unit was rented, I had the names and the

date that they rented it and that kind of stuff all in the

Sharri Furman - Direct

computer file. I would go out and always try to meet my customer. We had a contract or a lease -- whatever you want to call it -- that I filled out. Took rental payments, just whatever needed to be done.

Q. Did you accept rental payments for the actual contracts that you signed with the renters?

A. Yes.

Q. Was it also part of your responsibilities to collect rental payments for the other storage units, not the ones that you personally rented?

A. Oh, yeah.

Q. What did you do with those, the rental payments that you would collect?

A. I usually -- if I collected them out here at the facility, I usually always just took them back to the office. We had a little place that we kept money there, you know. If there was quite a bit, I would bank it. If Mr. Hager wasn't around.

Q. By "bank," meaning you'd deposit the money?

A. Deposit, uh-huh.

Q. Did you maintain a computer file for each of the rental units?

A. Yes, I had one for each unit.

Q. And what kind of information did you keep in that computer file?

A. Well, whatever I had: Name, address, sometimes a phone

Sharri Furman - Direct

number. That would be about -- how much each unit was, you know, as far as per-month rental.

Q. What the rental fee was?

A. Was, uh-huh.

Q. Did you keep track of when the rental payments came in?

A. Not exact dates, always, but pretty close.

Q. And did you -- how did you organize the computer files?

A. Each unit had its own -- I had file numbered 1 through 47. And so if -- whoever was in that unit at the time, their name was on there. When they left, their name came out and somebody else would go in, so . . .

Q. Were rental agreements signed between Boots U-Store-It and a customer for each rental?

A. No.

Q. Under what circumstances were agreements not signed?

A. If it wasn't handled by me, there was a good possibility. Boots didn't always go out and have a contract signed or anything. I usually always tried to, though.

Q. Did you always personally -- that is, in person -- receive the monthly rental payments from the customers?

A. No.

Q. How else would you or Boots U-Store-It receive rental payments?

payments.

A. Of course by mail. Some of our customers were out of town. Also he allowed his customers to pay at the Conoco deli shop.

Sharri Furman - Direct

Q. When a payment was -- when a rental payment was made at the Conoco gas station, at the deli shop, was any paperwork created?

A. Yes, the Conoco had credit card slips that whoever was working at the time would fill out, usually with name and a unit number and the amount that they received.

Q. What happened to that record, that document at that point?

A. At the end of the day, when all the Conoco business was sent to the house or to the office, it would come with that, to the house.

Q. Back to you, then, in the office?

A. Uh-huh.

Q. What did you do with those documents?

A. We usually had them stashed somewhere around the office. We weren't real organized.

Q. Okay. But you kept all of those records?

A. Most all of them. Not always.

Q. In 1994, were rental payments due on any particular day of the month?

A. If you rented the unit on a certain day, that's when it was due. So if you went and rented a unit on like the 10th, when we initially got the payment on the 10th, then you would be due again the 10th of the following month.

Q. So there was no one set date for all customers?

A. Not in '94, no.

Sharri Furman - Direct

Q. So I take it, then, that you were receiving rental payments for the different units on all different days of the month?

A. Yes.

Q. Was it possible for a customer to pay monthly rental for several months in advance?

A. Sure.

Q. You said that if Mr. Hager sometimes rented the unit, that there was no contract; is that right?

A. Yes.

Q. Tell us how those rentals would take place, then.

A. Almost everyone called us at the house because -- I mean we weren't in a prominent place. So if someone called over the phone, Mr. Hager always knew what unit was available. So he would just usually ask the person what size they wanted, and he could tell them if we had one or not. And he'd send them out there, let them know how much it was. And then they could pay at the deli shop, and he would never have them sign a contract or anything.

Q. If there was no rental agreement, did you still maintain a computer file?

A. Yes. He usually always got a name, an address for me to

put in the file.

Q. He would give you that information?

A. Uh-huh.

Q. What I'd like to do now is to direct your attention to

Sharri Furman - Direct

October 1994. Based upon your review of the records from Boots U-Store-It, did someone beginning renting a unit in October of 1994?

A. Yes.

Q. What was the customer's name?

A. Joe Kyle.

Q. And what shed or unit number did Joe Kyle rent?

A. He rented No. 40.

Q. And did you open and prepare a computer file for that rental?

A. Yes.

Q. Tell us what you did.

A. I got the name from -- it was either on my desk or whatever, and I put -- I opened up Unit No. 40, my card file, and put in the name. And I believe I had an address and stuff for him, also.

Q. Was there a rental agreement signed for that rental?

A. No.

Q. What was the amount of the monthly rent for that unit?

A. That unit was \$30 a month.

Q. And what happened to the initial rental payment?

A. It was deposited in the bank.

Q. Before coming to court, have you been able to determine the rental history for Unit 40 to this Joe Kyle?

A. Yes.

Sharri Furman - Direct

Q. How did you do that?

A. I just went through our records that we had as far as deposits and the receipts and stuff that we had and determined how many months it was.

Q. What I'd like you to do is to look into the folder that you have for Government's Exhibits 107, 107A, 108, 109, 111, 111A, and 112.

A. Okay.

Q. Got them all.

Do you recognize those documents?

A. Yes.

Q. Have you reviewed them prior to coming to court?

A. Yes.

Q. What do you recognize them to be?

A. Some of them are deposit tickets for the bank, and others are receipts that we received from over at the Conoco station where payments were made.

Q. And are those all business records that relate to the rental by Joe Kyle of Unit No. 40?

A. Yes.

MR. MEARNS: Your Honor, we would offer 107, 107A, 108, 109, 109A, 111, 111A, and 112.

MR. WOODS: No objection.

THE COURT: They are received.

BY MR. MEARNS:

Sharri Furman - Direct

Q. And just so the record is clear, 107A is a more legible copy of 107.

A. Just a moment.

Q. I'm sorry, I should have done that as we went along.

A. Yes.

Q. And 111A is also then a more legible copy of 111?

A. Yes.

Q. If you would now look at -- for Government Exhibit 114.

A. Okay.

Q. And do you recognize that?

A. Yes.

Q. What is that?

A. This is a record that came off of our computer. It's a printout of one of our screens that we had.

Q. And is that a printout of the rental record for the Joe Kyle rental of Unit 40?

A. Yes, it is.

MR. MEARNS: Your Honor, we would offer Government Exhibit 114.

MR. WOODS: No objection.

THE COURT: 114's received.

BY MR. MEARNS:

Q. Miss Furman, if we could begin with 107. Why don't we publish 107A, since that's the more legible copy. And tell the jury what this is, please.

Sharri Furman - Direct

A. This is one of the receipts that we got from the Conoco station when a payment was made over there.

Q. Okay. Beginning with the handwritten information there at the top, what does that say there?

A. It says, "Joe Kyle, Unit 40." We have the date, which is --

Q. What is the date that's handwritten there?

A. 10-17-94.

Q. And what is the information over on the lower right-hand side?

A. That's the amount that they received, \$30.

Q. Was it common practice for the employees at the Conoco gas station to have the person making the payment sign the receipt acknowledging the payment of the rent?

A. Some did, some didn't.

Q. In this case, was it signed?

A. Yes, it was.

Q. And referring then to the lower left-hand corner is that

Q. And referring then to the lower left hand corner, is that where the individual signed it?

A. Yes.

MR. MEARNS: Your Honor, at this time I'd like the Court to publish a stipulation that the handwriting in the lower left-hand corner where it says "customer signature" was written by Mr. Terry Nichols.

MR. WOODS: Yes, your Honor. That's our stipulation.

Sharri Furman - Direct

THE COURT: All right. And so we accept that agreement as the true fact.

MR. MEARNS: Thank you.

BY MR. MEARNS:

Q. Miss Furman, now turn to 108.

A. Okay.

Q. And tell the jury what that is.

A. This is a deposit slip that we used for the storage units.

Q. And you have the original there.

A. Uh-huh.

Q. If you could turn it over to the back side, I believe.

A. Okay.

Q. And what does it reveal there on line 6?

A. Line 6, "J. Kyle." Unit No. was 40, \$30. The "C" represents that it was cash.

Q. Okay. And that's the deposit slip for the previous rental payment we looked at just a moment ago, 107?

A. Yes.

MR. MEARNS: If we could publish 111A, please.

BY MR. MEARNS:

Q. And what is that?

A. That's another ticket that was come from the deli shop, the Conoco station.

Q. And again, at the upper left-hand corner it indicates that it was the Joe Kyle rental, Unit 40?

Sharri Furman - Direct

A. Uh-huh.

Q. And what is the date of the payment on that?

A. February 9, 1995.

Q. And the lower left-hand portion of the document, there is a signature for Joe Kyle; correct?

A. Uh-huh.

Q. Is that the signature of the customer?

A. Yes.

MR. MEARNS: Your Honor, again, there's a stipulation with respect to the handwriting of the customer's signature; that it's written by Mr. Terry Nichols.

MR. WOODS: Yes, your Honor. That's our agreement.

THE COURT: So that the words "Joe Kyle" there were written by Mr. Nichols.

BY MR. MEARNS:

Q. Finally with respect to this, if we could turn to 114. And

if you could explain to the Court and the jury what --

A. This is our computer printout. This is the file that I kept in '94 of each unit. I had one on each unit, and this one was No. 40.

Q. And in the lower right-hand corner, there is an entry there. I think it says "LST," last payment. Is that right?

A. Uh-huh.

Q. And what's the date that's written there?

A. 3-15-95.

Sharri Furman - Direct

Q. At some point in 1995, was there a change in the way that -- when rental payments became due?

A. Yes, we did. We got a new computer system. And we did some prorating on some of the customers, depending on what time of the year -- time of year; excuse me -- time of the month that they had rented on. And we tried to do everything from the 1st to the 10th, so we had some fluctuation there at the first of the year.

Q. And at that point, did there become a date within each month when all rental payments were due for all customers?

A. Yes.

Q. What date did that become?

A. The 1st.

Q. What does this reflect? What does this information reflect in terms of the date being March 15, '95? How long was this Unit 40 paid through for Joe Kyle? That is, when did the rental expire?

A. The 1st of April.

Q. Now, I would like to turn your attention to November 7, 1994.

A. Uh-huh.

Q. Did you personally receive a phone call about another possible rental on that day, November 7?

A. Yes, I did.

Q. Where were you when you got the call?

Sharri Furman - Direct

A. I was in the office.

Q. Where was your office located?

A. It was at 314 North Washington.

Q. Was the caller a man, or a woman?

A. A man.

Q. Did he identify himself?

A. I believe that he did, but I don't remember.

Q. What did this man say?

A. He was interested in a storage unit.

Q. What did you say?

A. I told him that we had some available, you know, and I don't remember my exact conversation; but we set up a time, and I met him at the units.

Q. When was the time that you arranged in relation to the time

that you received the call?

A. I went out as soon as I got my contract and hung up the phone and could get out there.

Q. Was there any reason that you went out right away?

A. The customer was from out of town, and he was just going to be there for a while, so . . .

Q. And did you in fact go out there that same day?

A. Yes.

Q. Tell us what happened when you arrived.

A. Somebody was already waiting on me; I assumed, you know, that's who I spoke with. I pulled up to where he was parked,

Sharri Furman - Direct

and we started filling out a contract.

Q. Did you speak to him before you started filling out the contract?

A. I'm sure I did.

Q. Okay. And did he identify himself at that point?

A. I'm not sure at that particular point -- I'm sure he did say he was who called me.

Q. During the telephone conversations, did you give this man directions to the storage facilities?

A. No. He knew where they were at.

Q. Describe the man you met that day.

A. He was about 5' 9", probably 6-foot. He had brown hair, but not real dark, wore glasses.

Q. If that man were in the courtroom today, would you be able to identify him?

A. I think so.

Q. Could you take a look around the courtroom and see if you can tell us the man you saw that day.

A. Yes.

Q. Do you see the man?

A. Yes.

Q. Could you point out where he's seated and what he's wearing?

A. He's setting (sic) over here at the table. He's got on a blue jacket with a blue, looks like, shirt and a white T-shirt.

Sharri Furman - Direct

MR. WOODS: Your Honor, we stipulate the identification. It's never been contested.

THE COURT: All right. Thank you.

BY MR. MEARNS:

Q. When you arrived at the storage facilities, did you have a conversation with Mr. Nichols?

A. I'm sure I did.

Q. Did he tell you what kind of storage unit he was looking for?

A. I don't remember if we discussed size or anything, really. We pretty much had some picked out, so I would say we knew what we were looking for.

Q. And did you identify any units that were available?

Q. And did you identify any units that were available?

A. Yeah.

Q. How many available units did you identify?

A. I believe we had two on that end at the time.

Q. When you say "on that end," what are you referring to?

A. Well, when I got there, he was clear to the back side of the units, which was where the units were.

Q. Well, let's look at Government Exhibit 105, which is in evidence. I think it will come up on the screen in one moment.

What do we see in that picture?

A. This is the east end of one of the buildings.

Q. What's behind us to the right?

A. That's the propane company.

Sharri Furman - Direct

Q. Okay. Well, but directly behind this area of the storage facility.

A. That's more storage. And that big hill that we talked about earlier.

Q. So this is the back side of the facility?

A. Right.

Q. And when you arrived, Mr. Nichols was already in this area of the storage facility?

A. Uh-huh.

Q. Did Mr. Nichols inspect the unit that day?

A. Yes. I believe we looked at both 36 and 37.

Q. And did you prepare a rental agreement that day?

A. Yes.

Q. Tell us about that procedure.

A. It's just a contract that states the speculations or restrictions of the units and stuff; and at the top there's a place to put the name and address, phone number, different information like that. And we filled the top of it out.

Q. If you would look in your file there for Government Exhibit 113.

A. Okay.

Q. Do you recognize that?

A. Yes.

Q. And what is that?

A. This is the contract that we did.

Sharri Furman - Direct

Q. And was that record created and then maintained by Boots U-Store-It?

A. Most of the time.

Q. But was this particular --

A. This one was, yes.

MR. MEARNS: Your Honor, we would offer Government Exhibit 113.

MR. WOODS: No objection.

THE COURT: 113 received.

BY MR. MEARNS:

O. Can you tell what information is there, is reflected at the

top? The handwritten information, please.

A. Okay. I wrote in the unit number, which was 37; who it was to, Ted Parker; an address, 3616 North Van Dyke, Decker, Michigan, and the ZIP code. Then there's a phone number, and I also wrote in the date that we did the lease and the possible termination.

Q. Where did you get the name "Ted Parker" and the address that's written there?

A. From the man that I rented it to.

Q. From Mr. Nichols gave you that --

A. Yes.

Q. And the monthly rental was \$30 there?

A. Yes.

Q. And that's the date, November 7, 1994?

Sharri Furman - Direct

A. Uh-huh.

Q. Did you ask Mr. Nichols to sign the agreement?

A. Yes.

Q. And did he?

A. Yes.

Q. Did he use the same pen that you had used to fill out this information?

A. Yes.

Q. And if we could focus, then, down at the bottom of the agreement. Is that the signature in the lower right-hand corner?

A. Yes.

MR. MEARNS: Your Honor, there's a stipulation that the handwriting, signature in the lower left-hand side, is the signature of Mr. Terry Nichols.

MR. WOODS: Yes. That is our stipulation.

THE COURT: All right. Once again, we accept that agreement.

BY MR. MEARNS:

Q. Did Mr. Nichols give you any money that day?

A. Yes, he did.

Q. How much money did he give you?

A. \$90.

Q. What did you do with that money?

A. I took it back to the office.

Sharri Furman - Direct

Q. So with the \$30 -- How long --

A. That would be three months.

Q. If you would look at Exhibit 110.

A. Okay.

Q. And what is that?

A. This is a deposit ticket.

Q. And was that a deposit ticket that was created and then kept in the normal course of business?

A. Yes, it is.

MR. MEARNS: Your Honor, we would offer 110.

MR. WOODS: No objection.

THE COURT: Received, 110.

BY MR. MEARNS:

Q. And if we could flip over -- well, I'm sorry. If we could go on the front side. What is the date of this deposit ticket?

A. This one is 2-3-95.

Q. Okay, now if we could flip over to the back. So that's February 3, 1995?

A. Right.

Q. Is there a deposit reflected there for an additional payment by Ted Parker for Unit 37?

A. Yes.

Q. What line is that?

A. 6.

Q. And that is an additional three months' rent?

Sharri Furman - Direct

A. Uh-huh.

Q. So if that additional rent came in in the early part of February, how long would that extend the rental of Unit 37?

A. To the first part of May.

Q. I want to direct your attention back to your initial meeting with Mr. Nichols on November 7. Did you see what kind of vehicle he was driving?

A. Yes, I did.

Q. Could you describe that for us?

A. It was a blue pickup, and it had a white camper shell or topper on the back of it.

Q. I'd like to have you look at what is in evidence as Government Exhibit 51.

Is that the pickup Mr. Nichols was driving that day?

A. Looks like it, yes.

Q. How long were you with Mr. Nichols on November 7, 1994?

A. Maybe 15 minutes.

Q. During the 15 minutes or so that you were with him, did he ever tell you that he'd rented another unit at your facility under the name of Joe Kyle?

A. No.

Q. Did he ever tell you that his true name was Terry Nichols?

A. No.

MR. MEARNS: No further questions.

THE COURT: Mr. Woods.

Sharri Furman - Direct

MR. WOODS: Yes, your Honor, thank you.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good afternoon, Miss Furman. My name is Ron Woods. I've been appointed to help Terry Nichols in this case.

I want to thank you for talking with our investigators when they went over there to Council Groves and Boots Hager

about the rental and you provided copies of the records for us.

I had just a couple of questions on these records that we've just gone over. On the first unit, which was No. 40 in the name of Joe Kyle --

A. Uh-huh.

Q. -- you mentioned that there was a time when you switched over on the computer records and credit was given to the rentals because you were trying to line up all the dates for the 1st of the month; is that correct?

A. Yes.

Q. Did you send out any notice of that to the renters; that that's what you had done, is credited the time?

A. For some of them, yes, we did. It kind of depended on what time of the month that they had rented the unit.

Q. Okay. Now, you're aware that Mr. Nichols moved out of the units there in March '95, when he bought his house in Herington?

A. I am not real sure when they moved out, no.

Sharri Furman - Cross

Q. Okay. Did y'all go by and check the units, see when they're vacant so that you could rent them?

A. Mr. Hager usually always knew, yes.

Q. Okay. Okay. So the record that you showed as to March 15, '95, a payment of \$30: Did you actually have a record that reflects you received \$30 on March 15, '95?

A. I'm not real sure.

Q. This is for Unit 40 in the name of Ted Kyle -- Joe Kyle?

A. I'm not real sure if we have one that was dated in March or not. The records weren't always keepen (sic).

Q. Right. And you've been very kind in pointing out that this was sort of a haphazard thing and it wasn't -- I mean it's not the biggest business venture --

A. Right.

Q. -- that you need to keep exact records for.

A. Right.

Q. But was Boots Hager aware that Mr. Nichols was moving out in mid March, '95?

MR. MEARNS: Objection.

THE COURT: Sustained.

BY MR. WOODS:

Q. If you know.

MR. MEARNS: Objection.

THE COURT: Well, I don't know how she could know

what

another person was aware of.

Sharri Furman - Cross

MR. WOODS: Okay.

BY MR. WOODS:

Q. Did Mr. Hager ever tell you that Unit 40 was now available for rental in mid March of '95?

FOR RECORD IN MID MARCH OF '95.

A. I'm assuming, that, yes, he did, because we cleared it.

Q. So the fact that -- when you say you cleared it, what do you mean by that? Could you explain it?

A. We showed that the unit was empty.

Q. Okay. And did anybody ever go by and inspect what was inside the units?

A. No, we did not.

Q. Did Mr. Nichols tell you what he was putting in the units when he rented them?

A. No, he did not.

Q. As to the size of No. 40, can you tell us what size locker that was?

A. Yes. That was a 10-by-5.

Q. And what is the floor material made of?

A. They are cement.

Q. And the walls?

A. They're just metal buildings.

Q. And is there 2-by-4 there on the floor that the metal or the tin is fastened to?

A. I'm sorry. I do not know that.

Q. Okay. What about Unit No. 37: What's the size of it?

Sharri Furman - Cross

A. It's also a 10-by-5.

Q. And these are metal doors that slide up like that?

A. Yes, they were.

Q. And you saw -- when did you leave Council Grove?

A. I moved to Colorado the end of February of '97.

Q. Okay. You saw those units shortly after May '95 when the FBI came to inspect them?

A. Yes.

Q. You see all that black fingerprint powder all over the walls and doors?

A. Yes.

Q. That stayed there quite a while, didn't it?

A. I can't tell you.

Q. It was over there several months later, wasn't it?

A. Yes.

Q. When we came over?

Now, both units had cement floors, to your knowledge; is that correct?

A. Yes, they did.

Q. And the walls were metal?

A. Yes.

Q. Is that sort of a sheet metal, like a tin almost?

A. Yeah. It's the ripple kind.

Q. Right. Okay. And then it had wooden frames inside to hold --

Sharri Furman - Cross

A. There again, I'm not sure.

MR. WOODS: Okay. Okay. Thank you so much. We

appreciate it.

THE COURT: Anything else of this witness?

MR. MEARNS: No, your Honor. She may be excused.

MR. WOODS: She may be excused, your Honor.

THE COURT: You may step down. You're excused.

Next.

MR. MACKEY: We call at this time Mr. Frederick Schlender.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Raise your right hand, please.
(Frederick Schlender affirmed.)

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

THE WITNESS: Okay.

THE COURTROOM DEPUTY: Would you state your full name for the record and spell your last name.

THE WITNESS: It's Frederick Allen Schlender, Jr.

The last name is S-C-H-L-E-N-D-E-R.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Good afternoon, Mr. Schlender.

A. Good afternoon.

Q. Where do you live?

Frederick Schlender - Direct

A. I live in Burden, Kansas.

Q. Where is Burden, Kansas?

A. Burden, Kansas, is halfway between Hutchinson and Newton, Kansas, just northwest of Wichita.

Q. How long have you lived in that area of Kansas?

A. I've lived there all my life, except for the four years of college that I attended.

Q. Where did you go to college?

A. I attended college at McPherson, Kansas. McPherson College.

Q. Did you graduate from McPherson College?

A. Yes, I did.

Q. When did you graduate?

A. I graduated in 1980.

Q. And are you married, sir?

A. Yes, I am.

Q. Do you have any children?

A. I do have.

Q. How many children do you have?

A. I have one daughter.

Q. How old is your girl?

A. My daughter is nine years old.

Q. Where do you work?

A. Right now, I'm self-employed on our family farm.

Q. How long have you been working on your family farm?

Frederick Schlender - Direct

A. It's been since the first of August of this year.

Q. The first of August of 1997?

A. 1997; correct.

Q. Where is your farm located?

A. The farm is located at Burden, Kansas.

Q. Where did you work before August of 1997?

A. I worked for Mid-Kansas Co-op in McPherson, Kansas.

Q. When did you start working for the Mid-Kansas Co-op?

A. Started working there in May of 1979.

Q. What is the Mid-Kansas Co-op?

A. Mid-Kansas Co-op is a cooperative that is farmer-owned that handles ag products for producers and also consumers' products for consumers within the communities we service.

Q. And what was your position at the co-op when you resigned in August of '97?

A. I was the location manager there.

Q. For what location?

A. At McPherson.

Q. I'd like you to take a look at what's been introduced into evidence as Government Exhibit 2045.

And could you show us on that map approximately where Burden, Kansas, is, where you live and now farm.

A. Burden, Kansas, is right there.

Q. Okay. Just a little northwest of Wichita?

A. That's correct.

Frederick Schlender - Direct

Q. How far north and west of Wichita is it?

A. It's approximately 40 miles.

Q. And you worked in McPherson?

A. That is correct.

Q. Could you put a circle around McPherson there on the map.

A. That thing doesn't line up on the -- there it is.

Q. About there. Thank you.

When you were working at the Mid-Kansas Co-op, how many branches of co-op were there?

A. When I was working there, I believe there's 19 branches of our co-op.

Q. And they're all located there, roughly speaking, in central Kansas?

A. That's correct.

Q. What were your duties and responsibilities when you were the location manager or branch manager?

A. I was in charge of the operations of the McPherson location there, involved all the elevators and the service station and the ag products.

Q. When you say "ag products," what do you mean?

A. Ag products would be fertilizer, chemicals that are involved in the production.

Q. What other kind of products did you sell to customers?

A. Also had consumer products there: lawn, garden products; had feed; TBA products, which is tires, batteries, accessories,

Frederick Schlender - Direct
oils, things of that nature.

Q. Did you provide services to your customers?

A. Yes, we did.

Q. What kind of customers came into the McPherson branch of the Mid-Kansas Co-op?

A. We had a mixed type of customers. We had quite a bit of consumer traffic out of our community plus the farmer traffic that came into our store.

Q. What's the difference between consumer traffic and your farmer customer?

A. Farm customers are the larger-volume customers that come and buy fertilizer and chemicals and oil products or fuels and things of that nature. And consumers are those who come in for the dog foods, lawn-and-garden fertilizer, lawn-and-garden chemicals.

Q. What were your -- what kinds of things did you do on a day-to-day basis?

A. Day-to-day basis, as I said before, I oversaw the operations of our McPherson location. And then also I dealt with the public quite often there in the store.

Q. You would actually deal with customers and do transactions?

A. That is correct.

Q. Did you also have any role in custom fertilizer applications?

A. I did. I did a lot of the sign-up work. That's what I

Frederick Schlender - Direct

started at when I started in '79 with Mid-Kansas Co-op, was the custom applicator, and I still stayed with that a little bit.

Q. When you say "a little bit," what do you mean?

A. Oh, I would run in the evenings and sometimes days when I had the employees gone.

Q. What were the hours that the co-op was open for business in 1994?

A. Co-op business hours were 7:30 in the morning to 5:30 in the evening. And that was Monday through Friday. And then on Saturday, 7:30 till noon.

Q. And what were your hours?

A. Most of the time, I would be there between 5 and 6 in the morning and go till 7:30, 8:00 at night.

Q. How many employees, besides you, were working in the McPherson branch in the fall of 1994?

A. At the McPherson west location there, in my office, there was four employees there.

Q. And who were those four employees?

A. Okay. Besides myself, it was Jerry Showalter, Donna Schaefer and Tony Hazelton.

Q. So there were four including yourself?

A. Right. Excuse me.

Q. There were times during the day, in the fall of 1994 -- were there times during the day when the -- when your branch was more busy than other times?

Frederick Schlender - Direct

A. There's times usually first in the morning and toward the latter part of the day when we ran into the consumer market, when they got off work and people would stop off at our store there.

Q. Describe, if you would, the physical layout of the

McPherson branch.

A. The physical layout of our store, where we had our display area, is the north building that faced the roadway; and that had display area where we had feed and lawn-and-garden products and dog food and things of that nature. And also had office area.

In the back of that, we had a bay area, service work on cars and trucks and that.

Directly south of that building, the other building that faced the road, was our warehouse, which also had bulk fertilizer storage in back of it.

Beyond that, we had liquid-fertilizer storage to the northwest of our main building and also ammonia storage behind our warehouse and fertilizer storage.

Q. If you would take a look in the folder that sits in front of you for Government's Exhibits 64, 65, 66, 67, and 68.

Do you have those in front of you?

A. Okay. All five of them; right.

Q. Have you had an opportunity to look at those photographs before coming to court today?

Frederick Schlender - Direct

A. Yes, I have.

Q. Are those accurate pictures of how the McPherson branch looked in the fall of 1994?

A. Yes, it was. Yes, they are, I should say.

MR. MEARNS: Your Honor, we'd offer Exhibits 64 through 68, inclusive.

MR. WOODS: No objection.

THE COURT: They are received.

MR. MEARNS: Your Honor, and with the Court's permission, I'd like to publish first Exhibit 64.

THE COURT: All right.

BY MR. MEARNS:

Q. And using your light pen there, if you could tell us what we see. If you could click there once so you clear it.

A. Okay.

Q. Describe, then, quickly the buildings that you see there.

A. Buildings as I described earlier -- the one I'm putting the X on is the -- our display area, office area, our bay area for car service.

Directly to the south of -- or to the left of that is the warehouse area where we stored products on pallets, mainly softener salt and fertilizer products such as that.

Q. What are the large tanks that we see directly behind that?
A. These that I've put an X on back here are ammonia storage tanks that we filled the smaller tanks which I'm going to X

Frederick Schlender - Direct
right now, in the two areas.

Q. And is that a liquid, or a gas that's contained in that tank?

A. Under pressure, that is a liquid. When released, it's a gas.

Q. And what do you do with that for your customers?

A. That is a product that they inject into the ground for a nitrogen source.

Q. It's a fertilizer?

A. It's a fertilizer; correct.

Q. Now, if you would turn to 65.
And if you'd clear the pen there.

What do we see in that picture?

A. That is our display area and office area and where the service bay is in the back of that.

Q. And is that the customer parking there directly in front?

A. That is correct.

Q. Is that the main building that customers come into on a regular basis?

A. That is the first building that they would come to; correct.

Q. Let's turn to 66, please. What do we see there on the left side?

A. On the left side of the open doorway is the warehouse area where we stored pallets.

Frederick Schlender - Direct

Q. That's the larger building that we saw on the left side of the aerial photograph?

A. Right.

Q. And that's the customer building on the right?

A. On the right.

Q. And now 67, please. What is that?

A. That is inside the warehouse area where -- the storage area.

Q. And finally, 68. What is that?

A. That is the -- our display area. The view we have there is looking out from the office area, looking to the front of the building.

Q. And is that the counter where transactions are conducted?

A. That is the counter where transactions are conducted; correct.

Q. And the angle of this photograph is from where the employees would be standing looking out to where the customers would be standing. Is that correct?

A. That's correct.

Q. Thank you. I want to direct your attention now to a

specific transaction in the fall of 1994. Were you working at the co-op then?

A. In the fall of 1994; correct.

Q. Do you recall ever selling 2,000 pounds of ammonium nitrate fertilizer to a man who identified himself as Mike Havens?

Frederick Schlender - Direct

A. Yes, I do.

Q. What do you recall about how that transaction started?

A. Individual came into our office area and display area there and came across; and I was behind the counter, as viewed this Exhibit No. 68, and greeted him there. And asked how I could -- what I could do for him.

He asked for a ton of ammonium nitrate.

Q. What did you say in response?

A. At that time I grabbed a ticket to proceed with the transaction and started talking with the individual, asked him what he was using the product for.

Q. And did he respond at all?

A. Yes. He responded by -- said he was planting wheat.

Q. Did he say what he was going to do with the ammonium nitrate in connection with planting wheat?

A. He was using it to fertilize the wheat when he was planting the wheat.

Q. Did he describe how he was going to use the fertilizer when he planted the wheat?

A. He was going to put it on with a drill when he was planting the wheat. A mechanism on the drill.

Q. Explain how that would work.

A. There was a -- as I described, in the back on the drill itself, there's a compartment where the fertilizer goes in, and there are types of settings there so you adjust the setting to

Frederick Schlender - Direct

fertilizer going on and distribute it as you plant the seed.

Q. So the primary purpose of the drill is to cut a hole in the

ground and plant the seed?

A. That's correct.

Q. And at the same time you can also apply fertilizer?

A. That's correct.

Q. What did you say to the customer when he indicated that's what he intended to use the fertilizer for?

A. I talked a little with him about an alternative source that would have been cheaper source for him, called urea source, and that would have been in bulk; and he said he couldn't handle a bulk product, he needed to be in bag.

Q. What do you mean -- what's the difference between bulk and in the bag?

A. Bulk would have to have been hauled in some type of container that would control the -- you know, from blowing out or falling out on the road, of that nature.

Q. Did this man say where he was planting the wheat?

Q. Did this man say where he was planting the seeds.

A. He said he was planting it in the Durham area.

Q. Where is Durham in relation to McPherson?

A. Durham is northeast of McPherson. It's approximately 25 miles.

Q. What did you say to -- back to the customer when he told you that he needed it in the bags, as opposed to in bulk?

A. At that time proceeded to write the transaction, write the

Frederick Schlender - Direct

ticket, put down the forty 50-pound bags of ammonium nitrate.

Q. When you say "a ticket," what are you referring to?

A. That's the counter ticket that we use on all transactions that we do at our counter area there that's displayed in the No. 68 there.

Q. Let me show you what's in evidence as Government's Exhibit 72.

Is that a blank ticket or receipt of the type that you were just referring to?

A. That's correct.

Q. Tell us, then, what happened in connection with this transaction.

A. As I said, we -- I proceeded to write down the forty 50-pound bags of the ammonium nitrate fertilizer and at that time with the person asking about -- saying that he was a farmer, proceeded to ask him his name because of future purposes for the cooperative being a farmer-owned, if he became a patron -- or a stockholder later on, he would be eligible for the dividend from this purchase there.

Q. Are there members or stockholders in the Mid-Kansas Co-op?

A. Yes, there are. We had approximately 2,000 member owners of our cooperative.

Q. Let me show you what has been marked in evidence as Government Exhibit 75. I believe you have the copy in the folder there.

Frederick Schlender - Direct

A. Okay.

Q. What is that?

A. That is the yellow copy of the counter ticket that we have viewed earlier. That is the copy that is kept at our location for our records.

Q. And is that the actual yellow copy of the receipt that you prepared that day with this customer?

A. Yes, it is.

Q. Do you recognize the handwriting on the document?

A. Yes, I do.

Q. Whose handwriting is that?

A. That is mine.

Q. And could you describe for us the information that's reflected on that receipt, the handwritten information that's reflected on the receipt?

A. Okay. At the top of the patron account number is a 10. That's asking the patron if he was a member of our cooperative, and he said he wasn't. I proceeded to put a 10 there.

Q. And that 10 signifies the customer is not a member?

A. Not a member.

Q. What is the date, then, that is reflected to the right?

A. The date is 10-18-94.

Q. That's October --

A. October 18, 94; correct.

Q. The next entry?

Frederick Schlender - Direct

A. The next entry is the name, Mike Havens.

Q. And where did you get the information to put there?

A. I asked the individual for his name.

Q. And what did he say?

A. He told me "Mike Havens."

Q. What's the next information that's reflected there?

A. The "sold by" is initials, RS, which would be my initials.

Q. Okay. Continue there to the right.

A. To the right of that is the type of transaction, which is circled "cash."

Q. And did the customer indicate that was the way he was going to pay for the trans -- the purchase?

A. That's correct.

Q. And continuing down below that, then?

A. Then I put down the "40," and there's a slash in between the 50-pound, which indicates 50-pound bags of 34-0-0, which is the ammonium nitrate fertilizer.

Q. And what's, then, indicated to the right there?

A. That's price column, is 5.40. And then extended out from the 40 tons -- 40 is \$216, for a total.

Q. How long had you worked at this branch of the co-op?

A. At this time, that would have been approximately 16 years.

Q. By that time, did you come to know some of your regular customers?

A. Knew the regular customers well, yes.

Frederick Schlender - Direct

Q. Did you recognize this man who identified himself as Mike Havens?

A. No, I did not.

Q. In the fall of 1994, did you have other customers that purchased ammonium nitrate fertilizer like this?

A. Yes, we did. Primarily in the lawn-and-garden area, for fertility purposes there.

Q. I'm sorry. For?

A. For fertility purposes for the lawn and garden.

Q. For fertilizing grass?

A. Fertilizing grass, mainly.

Q. Was there ever a time that it was common to use ammonium nitrate, prills, to fertilize wheat like this man Mike Havens

was?

A. Yes, there was.

Q. When was that?

A. The most recent time would have been in the 70's.

Q. If we could look back at that receipt for a moment.

The receipt reflects down there in the lower right-hand corner that you charged sales tax; is that correct?

A. That is correct.

Q. Did you have a conversation with this man about sales tax that day?

A. Yes, I did. Farmer input, which he designated that he was using that, to plant wheat, are not sales taxed. If he wanted

Frederick Schlender - Direct

to sign an exemption, he did not have to pay sales tax.

Q. Did you explain that to the customer that day?

A. Yes, I did.

Q. Did he respond in any way?

A. He responded by saying that he would rather pay the sales tax.

Q. You have, I assume in other transactions, filled out those tax-exemption certificates?

A. Yes, I have.

Q. How long does it take to fill out one of those tax-exemption certificates?

A. A matter of seconds, 30 seconds.

Q. Does a customer need to sign the tax-exemption certificate?

A. Yes, he does.

Q. When you sell a product, do you require the customer to sign your receipt or your ticket?

A. Not with a cash transaction.

Q. Who loaded the fertilizer for this customer on October 18, 1994?

A. I loaded the fertilizer for this customer.

Q. How was it packaged?

A. It was packaged -- the forty 50-pound bags are packaged on a 4-by-4 wooden pallet, and it has a shrink-wrap around it to contain the bags together.

Q. And where did your co-op store it that day on October 18?

Frederick Schlender - Direct

A. That was stored in the warehouse south of the main office area.

Q. After you completed this -- the receipt for the transaction, what did you do with the copies of the receipt?

A. The copies of the receipt, the original white copy, which is the top copy, and the yellow copy stay there at the office. The pink copy or the third copy is given to the customer.

Q. Did you do that that day?

A. I did.

Q. What happened next?

A. I did then ask the -- excuse me -- the individual to back over to our warehouse area so we could proceed in loading the

over to our warehouse area so we could proceed in loading the pallet.

Q. When you asked the customer to do that, did he ask you where he was supposed to go?

A. No, he did not. He pretty well indicated he knew where that was.

Q. Let me show you again Government Exhibit 64.

Can you show us on that photograph with your light pen

where you directed the customer to go.

A. Directed him to back over in front of the warehouse, which is right here.

Q. And at that time, the pallet of fertilizer was contained in that warehouse?

A. That's correct.

Frederick Schlender - Direct

Q. What happened next?

A. After I proceeded to ask him to do that, I went to the back of our tire-service area, car-service area, to get a forklift to load the pallet of ammonium nitrate.

Q. What did you do?

A. I then drove it over to the warehouse, where I proceeded to get the pallet and brought it out to load.

Q. And did you load the fertilizer that day?

A. Yes, I did.

Q. Now, while you were inside the customer area, did you have an opportunity to look at this person?

A. Yes, I did.

Q. About how long were you with this man inside that building?

A. 5 minutes, approximately that long.

Q. How was the lighting inside the building that day?

A. The lighting in our building is a fluorescent lighting inside the building.

Q. Would you describe it well lit, poorly lit?

A. Well lit.

Q. And how long did you have an opportunity to look at this man when you were outside, when you were loading the fertilizer?

A. Loading, it would have taken about 2 minutes to do that.

Q. Did you have an opportunity to look at him then?

A. Yes, I did.

Frederick Schlender - Direct

Q. What time of day was this transaction?

A. This transaction happened in the 12 to 1:30 range, middle of the day.

Q. And what was the lighting outside like?

A. Sunlight that day.

Q. Describe the man who identified himself as Mike Havens.

A. The individual was a white male, I would say approximately 35, 40 years of age, around 5' 8" to 6-foot tall, slight build. I'd say 165 to 175 pounds.

Q. Do you recall the color of his hair?
A. Hair color would have been a light brown, short hair but not a crew cut, but light brown in color.
Q. Did this customer have any facial hair, beard, mustache?
A. No, he did not.
Q. How was -- how was the customer dressed?
A. Customer was dressed in normal dress for coming into our store; would have had jeans, shirt. I believe that day he had a coat on.
Q. And did he speak with any accent?
A. No accent.
Q. Was the customer talkative?
A. Not real talkative, but he did answer questions when I directed them to him.
Q. On October 18, '94, did you have an opportunity to see what kind of vehicle this customer was driving?

Frederick Schlender - Direct

A. Yes, I did.
Q. What kind of vehicle was it?
A. It was a dark-colored pickup with a light-colored topper.
Q. What do you mean by a topper?
A. Topper is a cab-height extended -- that goes across the top of the bed clear to the end of the truck.
Q. Do you recall approximately how old the pickup truck was?
A. I believe it was in the late 70's time frame.
Q. Were there any windows in the light-colored topper?
A. Yes, there were, I believe, there was windows in the topper.
Q. Were they clear?

A. They were clear enough to see through, but they had some type of sun retardant on them.
Q. On October 18, '94, did you load the pallet, the 1 ton of ammonium nitrate, into the bed of the pickup truck?
A. No, I did not.
Q. Where did you load the fertilizer?
A. Loaded it into a trailer that the pickup was pulling.
Q. What color was the trailer?
A. Trailer was red.
Q. Do you recall anything else about the trailer?
A. It was a pickup-style trailer, as described a pickup-bed trailer as a pickup where you cut the -- behind the cab between the bed, they cut that off and then attach a hitch so the bed

Frederick Schlender - Direct

of the truck can be used for hauling purposes.
Q. Do you recall any other features about the trailer?
A. I believe there was a -- it was -- I would say a 1960's Ford-type trailer, pickup trailer. And it had white-type lettering on the end gate.
Q. What was the condition of the trailer?

A. The trailer was in good condition.
Q. When you loaded the fertilizer, where was the customer?
A. The customer was standing to my left, or on the driver's side of the trailer.
Q. Was he assisting you in any way?
A. When I was loading it, he was just watching.
Q. Did he let down the end gate for you?
A. He did let the end gate down for me; correct.
Q. And that's when you loaded the pallet of fertilizer onto the trailer?
A. That's correct.

Q. Was the trailer capable of holding that 1 ton of fertilizer?
A. Yes, it was. Very comfortably.
Q. What was the condition of the trailer?
A. Trailer was in real good condition. There was no rust that I can remember. And nothing cut off on the back side.
Q. Was there any -- was there anyone else present while you were loading the fertilizer besides the customer?

Frederick Schlender - Direct

A. At the time I loaded the pallet of ammonium nitrate, a passenger exited the truck and watched the loading proceedings.
Q. Can you describe for us the passenger?
A. I briefly saw the passenger out of the corner of my eye. He was in the 6-foot range. Had brownish-colored hair, was a white male.
Q. Did you see about how tall he was?
A. In the 6-foot range, sir.
Q. One other question before we move on to another topic. Do you recall what the wheels looked like on the trailer?
A. The trailer -- the wheels were on the outside of the bed with some type of a fender covering the wheels.
Q. Had you ever seen this customer, this man who identified himself as Mike Havens, had you ever seen him prior to October 18, 1994?
A. I had seen him at one occasion before that.
Q. When?
A. That would have been the September 30 of 1994.
Q. And where?
A. That was at the same location as I was loading the pallet on the October 18 transaction.
Q. And did this man purchase anything else on -- or anything on September 30?
A. At that time he purchased a ton of ammonium nitrate. On September 30.

Frederick Schlender - Direct

Q. And what was your role in that transaction?
A. At that time I loaded the pallet, much the same as I described on the October 18.

Q. Who handled the transaction?

A. That September 30, Jerry Showalter handled the transaction.

Q. At this time, I'd like you to take a look at what's been introduced in evidence as Government Exhibit 73, please.

A. That's 64.

Q. Do you have 73 in front of you?

There we got it. Thank you. I'm sorry. Do you recognize that exhibit?

A. Yes, I do.

Q. What is that?

A. That is a ticket from our location which is the September 30 transaction.

Q. That's the receipt for the loading that you were just talking about a moment ago?

A. That's correct.

Q. What did Havens -- what did Mike Havens look like on September 30?

A. Same as I described on the October 18.

Q. Did he have any facial hair at all?

A. None that I recall.

Q. What kind of conversation, if any, did you have with this customer on September 30?

Frederick Schlender - Direct

A. That September 30, I asked him to let the end gate down so I could go ahead and load the ammonium nitrate on the trailer.

Q. And what did he say?

A. He proceeded to do that at that time.

Q. What kind of a vehicle was he driving?

A. The vehicle and trailer were the same as the October 18.

Q. What time of the day was this transaction on September 30?

A. That was in the 4 to 4:30 range.

Q. Are you certain that the man you dealt with on September 30 was the same man that you dealt with on October 18?

A. Yes, I am.

Q. Taking a look, then, if you would, at Exhibit 62, which is in evidence as Government Exhibit 62, what is that in comparison to the exhibit we just looked at, 73?

A. That is the pink copy or customer copy of the same ticket we looked at just preceding that.

Q. How do you recognize it to be the customer copy of the identical receipt?

A. The color pink and also the same ticket number is in the right bottom corner.

Q. On September 30, when you were loading the fertilizer, was anyone with this customer?

A. I don't believe there was.

Q. You didn't see anybody?

A. I didn't see anybody.

Frederick Schlender - Direct

O. Finally, I would like to show you what's in evidence as

Government Exhibit 318. Do you recognize the individual depicted in that photograph?

A. Yes, I do.

Q. Who do you recognize that to be?

A. Timothy McVeigh.

Q. Was that the customer Mike Havens that you dealt with on September 30 and October 18?

A. No, it's not.

Q. Are you certain of that?

A. I'm certain of that.

MR. MEARNS: No further questions.

THE COURT: We'll take the recess before cross-examination.

You may step down, Mr. Schlender.

THE WITNESS: Okay.

THE COURT: Members of the jury, we'll take our usual 20-minute afternoon break during which, of course, please follow the cautions regularly given to you at all recesses of keeping open minds, avoiding discussion of any of the testimony or any of the other things going on in the courtroom or anything about the case.

You're excused now, 20 minutes.

(Jury out at 3:10 p.m.)

THE COURT: We'll recess.

Frederick Schlender - Direct

(Recess at 3:10 p.m.)

(Reconvened at 3:30 p.m.)

THE COURT: Please be seated.

(Jury in at 3:31 p.m.)

THE COURT: If you'll resume the stand, please, Mr. Schlender.

Mr. Woods.

MR. WOODS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good afternoon, Mr. Schlender.

A. Hello, there.

Q. My name is Ron Woods. I've been appointed to help Terry Nichols in this case.

A. Yes.

Q. You and I met in this court back in February --

A. That's correct.

Q. -- of this year; is that correct? Okay.

The FBI came to see you on April 30 of '95 for the first time, right after the bombing; is that correct?

A. That's correct.

Q. And you were still manager at McPherson at that time?

A. At that time, I was.

Q. In fact, you were manager there up until what, August this year?

Frederick Schlender - Cross

A. August of '97, right.

Q. And then you went on to your family farm to work on the farm?

A. That's correct.

Q. Had you been working on that most of the time while you were also full-time there at McPherson?

A. I've been a part of the farm throughout that time, right.

Q. What caused you to go full-time on the farm?

A. At the year ago this past August, I -- my wife and I lost our three-and-a-half-year-old son; and at that time, I made a decision I needed to put more time in at home, had not spent a lot of time with him. And so I went a year and then decided at that time that I needed to change.

Q. Okay. And has your farm grown, or still the same size?

A. Farm is still the same size, sir.

Q. How big an area are you farming?

A. Right now, right around 500 acres.

Q. What types of crops?

A. We raise wheat, milo, soybeans, and alfalfa.

Q. Okay. Okay. How long have you had the farm?

A. My dad moved to our community there in 1952, and that's how long we've farmed there.

Q. And while you were working there at McPherson, you went to college and got your degree there at McPherson State College?

A. McPherson College.

Frederick Schlender - Cross

Q. And during the summers you worked on the harvest, the wheat harvest. You would start down in the panhandle of Texas, Oklahoma, and go up through Wyoming?

A. I did.

Q. Did that for three years?

A. Three years, correct.

Q. And there at the co-op -- did you say that you all were servicing cars? That was part of --

A. We do have a service area for service of cars there; correct.

Q. And I assume you serviced a lot of pickups?

A. We have some that we service and cars both.

Q. Is a pickup pretty much the vehicle of choice around central Kansas there amongst the farmers?

A. With the farmers, yes.

Q. Are you driving a pickup?

A. Yes, I do.

Q. And when the FBI came to see you on April 30, they asked you about the transaction six-and-a-half months earlier, back in October of '94. Is that correct?

A. That's correct.

Q. And I assume you've read those memorandum (sic) of interview before you testified here today?

A. Yes, I have.

Q. And you read the grand jury testimony?

Frederick Schlender - Cross

A. Yes, I have.

Q. And did you read your testimony from the hearing that you had here in February?

A. Yes, I have.

Q. Okay. Now, when the FBI first talked to you in April 30 of '95, it had been six-and-a-half months since the transaction.

A. That's correct.

Q. Approximately how many customers had been into your store since that date?

A. You're asking a lot there; but the number of days that we were open, we have approximately 75 customers a day.

Q. And is -- do you know how many days that was? Six-and-a-half months?

A. Right. Let's go with that.

Q. Be close to, say, 15,000 or more?

A. Don't have my calculator, so I'll --

Q. Okay. Okay. A lot of people pay cash when they come in and buy there at the McPherson store?

A. There is cash and charge customers; correct.

Q. Do you know what percentage of people pay cash?

A. Not exactly.

Q. It's not unusual for people to pay cash, is it?

A. No, it's not.

Q. Now, you described the vehicle to the FBI when they first interviewed you on April 30. Then they came back a couple of

Frederick Schlender - Cross

days later on May 2, '95. Do you recall that?

A. That's correct.

Q. When you described the vehicle the first time, you said it was a Dodge; is that correct?

A. Said it possibly a Dodge.

Q. And you said it was a four-wheel-drive?

A. Possibly a four-wheel-drive.

Q. And three-quarter-ton?

A. Possibly three-quarter-ton.

Q. What year Dodge did you estimate it was?

A. Late 70's.

Q. And you described the individual at the first meeting, didn't you?

A. That's correct.

Q. Said he was 6-foot tall?

A. Said he was approximately 6-foot tall.

Q. Now you're changing that today in front of the jury to 5-foot-8 to 6-foot?

A. I'd say approximately 6-foot tall in my mind.

Q. 5' 8" to 6-foot?

A. Correct.

Q. But you only told the FBI 6 feet when they came to see you the first time; is that correct?

A. I said approximately 6-foot.

Q. Didn't tell them 5' 8" to 6 feet?

Frederick Schlender - Cross

A. No, I did not.

Q. What other description did you give of the vehicle that you recall? You've read those memorandum of interview.

A. Yes, I have. It was dark-colored with a light-colored topper.

Q. And what else?

A. As we described earlier, late 70's style Dodge three-quarter-ton, four-wheel-drive.

Q. And the trailer: What did you describe the trailer as at that first meeting?

A. It was a red pickup-bed-style trailer.

Q. Okay. And it was a Ford cutoff trailer?

A. Possibly a Ford.

Q. And it had white lettering?

A. Possibly white lettering on the tailgate.

Q. Now, did you describe a license plate to the FBI at that time?

A. I had said I believed it had a Marion County, Kansas tag.

Q. And that was on the pickup, not the trailer?

A. On the pickup; correct.

Q. Can you recall seeing a license on the trailer?

A. No, I did not.

Q. Okay. And then on May 2, they came back to ask other questions about what time you recall the transaction occurring. Is that correct?

Frederick Schlender - Cross

A. That's correct.

Q. Okay. And asked you further description of the individual and the vehicle.

A. That's correct.

Q. Okay. And what description of the individual did you give at that time?

A. At that time, I had given them the description of his hair color. I don't believe I went any other details.

Q. Still same height, 6-foot?

A. I didn't go into that.

Q. Did you describe how he was dressed?

A. Did not describe that, no.

Q. Did you describe the person that was with him?

A. Described the person with him a second time, yes. It was approximately a 6-foot passenger at the second transaction.

Q. Now, after that occasion on May 2, you then went down to the grand jury in Oklahoma City to testify, didn't you?

A. Yes, I did.

Q. Okay. And you met with the prosecutors before you went in to testify?

A. Yeah, within a month preceding that.

Q. Pardon me?

A. The month preceding the grand jury.

Q. How many times did you meet with the prosecutors in the month before July 6, '95, before you testified in front of the

Frederick Schlender - Cross
grand jury?

A. One time.

Q. What -- how far in advance was that before the appearance before the grand jury?

A. It was in the middle of June, as I recall.

Q. Was that in Oklahoma City?

A. They -- at our offices there at McPherson.

Q. Then when you testified at grand jury, you were under oath and people were taking down your testimony; is that true?

A. That's true.

Q. And you've reviewed that testimony?

A. Yes, I have.

Q. Now, how did you describe the vehicle in front of the grand jury?

A. Described it as a dark-colored, possibly a dark-blue Dodge four-wheel-drive, three-quarter-ton pickup.

Q. Well, you left out the word "Dodge" when you went to the grand jury, didn't you?

A. Excuse me. I did.

Q. Did the prosecutor suggest to you that was a problem because Mr. Nichols' vehicle was a GMC?

A. No, they did not.

Q. But when you got in front of the grand jury, you only described it as a blue vehicle?

A. I said dark-colored, I believe.

Frederick Schlender - Cross

Q. Okay. And what did you talk about the license plate -- how did you describe the license plate to the grand jury?

A. I described it the same way I described it to you earlier. Kansas -- Marion County tag, and also told them why I believe it was that way, from the phone call that I received from the branch east of us telling of a customer that was needing a ton of ammonium nitrate.

Q. And the grand jury asked you if that transaction was unusual, didn't they?

A. They did.

Q. And you told them no, it wasn't unusual, didn't you?

A. I told them no, it was not unusual for the practice of fertilizing, going with the wheat.

Q. And further, the grand jury asked you if you talked to the person about where he was farming; is that correct?

A. I talked to the customer, yes.

Q. And you told them you had no conversation relating to where he was farming?

A. I did not recall at that time.

Q. Yes. You recalled that later after meeting with the prosecutors?

A. I recalled that later going over the events that occurred many times, in my own mind.

Q. Now, after the grand jury testimony in July, '95, you started having meetings with this FBI agent, Mr. Hersley?

Frederick Schlender - Cross

A. Yes.

Q. And one of the prosecutors who is no longer with them, Mr. Mendeloff?

A. I did.

Q. When was the first meeting you had with them?

A. That was in September of 1996.

Q. And where was that meeting?

A. It was held in our law enforcement center across from our office area.

Q. Now, in the original FBI interview, you suggested to them that if they gave you a lineup of pickup trucks, you could pick out the pickup truck.

A. I wanted to be certain of my choice, sir.

Q. And when this agent and the prosecutor met with you, did they show you a lineup of pickup trucks?

A. No, they did not.

Q. Did they show you a series of photos of one pickup truck?

A. Yes, they did.

Q. And whose pickup truck was that?

A. They did not say whose it was.

Q. And it was all the same pickup; is that correct?

A. Yes, it was.

Q. And you made a choice that, yeah, that looks like the pickup?

A. I said I believed that was the pickup.

Frederick Schlender - Cross

Q. What were you choosing between, if they were all the same?

A. I was not choosing between anything.

Q. The first meeting was September, '96?

A. That's correct.

Q. And how long did the meeting last?

A. Approximately an hour.

Q. Okay. And did they go over the description of the individual?

A. Went over the description of the individual, yes.

Q. Was that when you changed from 6-foot to 5-foot-8 -- to 6 feet?

A. No. "5-foot-8 to 6-foot" is approximately 6-foot in my eyes.

Q. And you told the FBI 6 feet, though, in April and May of '95?

A. I told them approximately 6-foot.

Q. How -- when was the second meeting you had with this agent and the prosecutor after September, '96?

A. It would have been in October of '96.

Q. And the first meeting lasted for how long?

Q. And the first meeting lasted for how long?

A. Approximately an hour.

Q. And where did you meet?

A. I had said we had met at the law enforcement center across from our office area.

Q. And the second meeting, where did that take place?

Frederick Schlender - Cross

A. The same place.

Q. Did they bring more photos of the same vehicle to you?

A. They did.

Q. Were you able to pick out the vehicle at that time?

A. First time I looked at the photos, I did not agree with the view. I couldn't see through the back window looking in the side view of the pickup, so I told them I wasn't certain. But they brought other photos at the second time.

Q. Now, was this a lineup with different trucks in it, or was this more photos of Mr. Nichols' truck?

A. More photos of the same truck.

Q. And did they go over again with you the description of the individual?

A. Didn't talk about the individual, I believe the second time, sir.

Q. What did you talk about?

A. We talked -- we met about a half hour and talked about the views of the pickup, also about a -- some pictures of a trailer.

Q. And you testified here today that it's a Ford pickup cutoff-bed trailer?

A. I said it was -- I believed it was, sir.

Q. And they were showing you some pictures of Donahue trailer?

A. Yes, they were.

Q. The flatbed trailer?

Frederick Schlender - Cross

A. They weren't a flatbed. They had sides on them.

Q. It's cut. It's low to the ground; right?

A. A little bit lower to the ground than a pickup trailer.

Q. When was the next meeting?

A. Next meeting was in January of this year.

Q. Okay. Where was that meeting?

A. That meeting was held at the same location the preceding two were.

Q. What subjects did you discuss then?

A. Talked about the same subject we talked about preceding.

Q. Did they show you photos of the pickup?

A. Did not show me photos of the pickup at that time.

Q. Did they show you photos of the Donahue trailers?

A. Did show photos of the Donahue trailers.

Q. What else did they discuss?

A. At this time, I don't know of any other things we discussed, sir.

Q. Now, back in April of '96, one year after the bombing,

Mr. Hersley and several other agents and some of these prosecutors came to your store in a Ryder rental truck, didn't they, in McPherson?

A. They came in a truck, yes.

Q. And you gave them a bunch of bags of not 34-0-0 fertilizer but some other 50-pound bags; is that correct?

A. That's correct.

Frederick Schlender - Cross

Q. What was it that you gave them?

A. A product called Triple 13 fertilizer.

Q. Did you not have 34-0-0 on hand at that time?

A. No, we did not.

Q. How many bags did you give them?

A. Gave them -- it was a little more than two pallets.

Q. In fact, you gave them 90 bags, didn't you?

A. Right. Uh-huh.

Q. Did they explain to you why they wanted 90 rather than 80?

A. No, they did not.

Q. Where did they put the bags?

A. Put them in the back of a truck, yes.

Q. Did you notice what kind of truck it was?

A. I don't recall, sir.

Q. Didn't notice the big "Ryder" across the side of it?

A. I don't remember if it was a Ryder truck or not.

Q. Do you remember the color of it?

A. No, I do not.

Q. Were you real busy that day?

A. I remember, sir, I brought the product to the back of our building where our service area is and somebody else loaded the truck.

Q. Well, they came to you to get the product, though, didn't they?

A. They came and asked, yes.

Frederick Schlender - Cross

Q. And you -- where did you place the product?

A. Put it in the back of our area as I proceeded to tell you, in our service area.

Q. Okay. That's where people load up?

A. No. That's just where we were -- were able to load it easy.

Q. Okay. Now, did you go with them when they took the 90 pounds -- 90 bags and leave?

A. No, I did not go with them.

Q. Okay.

A. As I described earlier, I wasn't there when it was loaded.

Q. Okay. The sacks that are back there -- you showed the jury photographs of the area where you keep these sacks when it's outside the sealed -- sealed pack. Is that correct? Do you recall those photos?

A. Yes. And -- you mean 67.

Q. Exhibit No. 67.

MR. WOODS: May we have Government's Exhibit 67 exhibited?

Thanks.

Is it on the computer that you can turn --

THE COURTROOM DEPUTY: It's in the computer. 67.

MR. WOODS: It's in evidence.

THE COURT: Yes.

MR. WOODS: If not, I can use this exhibit up here,

Frederick Schlender - Cross
your Honor.

Here we go.

Thank you, sir.

BY MR. WOODS:

Q. Now, can you describe for the jury what that is, sir.

A. Yes. That's our storage area of the warehouse.

Q. And these are pallets of various types of fertilizer?

A. Yes, they are, with the exceptance (sic) of an ice melt that is in the right hand closet.

Q. What's an ice melt?

A. It melts -- just as it says, it melts ice.

Q. Does that area back there get dusty from all these bags?

A. It does have some dust, yes.

Q. How often do you have to sweep out back there?

A. The warehouse area, we usually sweep out once a season, spring and fall.

Q. Now, these sacks are not absolutely impermeable, are they?

A. You want to ask that in -- you mean do they get broken? Is that what you're saying?

Q. Do things leak out of them?

A. Yes, they do.

Q. And you have various kinds of fertilizer lying around on the floor, I take it, that has to be swept up occasionally?

A. Yes, they do.

MR. WOODS: Okay. Thank you. We can turn that off.

Frederick Schlender - Cross

BY MR. WOODS:

Q. Now, you met with the FBI in January, '97, with the prosecutor; correct?

A. That is correct.

Q. Went over your testimony. And then you testified in February, '97, in this court?

A. That's correct.

Q. And you've reviewed that testimony?

A. Yes, I have.

Q. And how many times have you met with them since that time? Mr. Mearns has started meeting you with since Mr. Mendeloff is gone.

A. Uh-huh.

Q. How many times have you met with them since February, '97?

A. Met with them four times.

Q. And what did you discuss the first time and when was the first time?

A. First time was in July, this past year.

Q. And what did you discuss?

A. The -- as we've talked before, the testimony we had from this hearing back in February.

Q. Okay. Now, in your testimony today, you -- to the jury, you didn't relate that there was a Kansas tag on the car.

A. No, I did not.

Q. Are you changing that?

Frederick Schlender - Cross

A. No. I will state it as I did in the pretrial hearing there and as I did in Oklahoma. The reason for the Kansas tag was the call that we received from our location east of us saying that a customer was interested in a ton of ammonium nitrate.

Q. And you went on to describe the sticker that you saw on the Kansas plate to the grand jury?

A. Described the sticker that would normally be on a Kansas tag.

Q. Now, did the Government tell you that that was a problem because Mr. Nichols still had his Michigan tags on his truck at that time?

A. No, they did not.

Q. All right. Did the Government tell you that it was a problem describing him as 6-foot tall because he's not that tall?

A. No, they did not.

Q. You have a lot of transactions in that office where people pay cash for ammonium nitrate, don't they?

A. Yes, they do.

Q. And people don't take time to fill out the tax exemption for those cash purchases, do they?

A. No, because they're not eligible for tax exemption for lawn and garden.

Q. Okay. And the tax is only 6 percent anyway, isn't it?

A. Yes, it is.

Frederick Schlender - Cross

Q. And you're saying it's only for farmers that sign the tax exemption anyway; is that correct?

A. That and resale.

Q. Okay. If you swear that you're only holding it for resale, then you don't pay the ultimate consumer tax; right?

A. (Witness nods head.)

Q. Okay. But at any rate, most people who go in there and buy ammonium nitrate fertilizer and pay cash don't sign any tax exemption?

A. No, they don't.

Q. Okay. Now, you compiled for the FBI an inventory of your ammonium nitrate on hand in September and October, didn't you?

A. I did.

... 1 ...

Q. Do you remember Mr. West, Agent West, William West, that you worked with on that?

A. I remember him.

Q. Did you see him here yesterday? Were you here yesterday?

A. I did not see him here yesterday.

Q. How long have you been here this week?

A. Came in Tuesday.

Q. Okay. And you didn't see him in the witness room or anywhere yesterday?

A. No.

Q. You know what he looks like; right?

A. Yes, I do.

Frederick Schlender - Cross

Q. Receding hairline, glasses?

A. Uh-huh.

Q. Now, you're required -- when you were at McPherson and when you were at Mid-Kansas Co-op, you're required to have -- keep an inventory every month of the product on hand, aren't you?

A. Every two months we had an inventory.

Q. And had you testified before that it was every month?

A. I do not believe I have.

Q. How did you keep that inventory? What type of inventory sheet did you utilize?

A. The -- we took those from the two-month cutoff inventory sheets that we kept.

Q. Okay. And do you recall how much inventory you started with in September of '94?

A. September it was in the range of 2.2-ton, if I remember right.

Q. And do you recall what your October 1 balance was, or --

A. There was not an October 1.

Q. Pardon me?

A. There was not an October 1.

Q. You didn't do an October 1 accounting?

A. Every two months.

Q. Okay. Do you remember that sheet you did with Mr. West? Have you reviewed that? That's one of your 302's showing day by day the inventory on hand?

Frederick Schlender - Cross

A. No, I did not do that with him, no.

Q. Pardon me?

A. I do not do that with Mr. West.

Q. Do you remember reviewing it here recently?

A. No.

MR. WOODS: Your Honor, just for refreshment -- refreshment of memory.

THE COURT: You may approach and show him whatever you want.

MR. WOODS: Thank you.

BY MR. WOODS:

Q. Mr. Schlender, if you would just take a look at that, read it to yourself, and look at the name at the bottom as to who wrote it up.

A. William West.

THE COURT: Well, I think he just wants you to look at it and then he'll ask you some questions.

THE WITNESS: Okay.

THE COURT: You've read it now.

THE WITNESS: I've looked at it.

BY MR. WOODS:

Q. Thank you, sir.

Does that refresh your memory as to compiling an inventory on a day-to-day basis through September and October?

A. We had a receipt card. We did not keep track of the

Frederick Schlender - Cross
disbursement.

Q. Do you recall at the first of September starting off with 88 bags?

A. Yes.

Q. And you sold a number of bags down, until October 1, you only had six bags on hand, according to this tally?

Did you and Mr. West compile this? Does that refresh your memory at all?

A. No, I did not tally with Mr. West. He did that on his own.

Q. Okay. So this is an FBI-generated document that we should assume is accurate?

MR. MEARNS: Objection.

THE COURT: Sustained. I mean as to the assuming that it's accurate.

MR. WOODS: Yes, your Honor.

BY MR. WOODS:

Q. Did you provide the figures to him to compile this, sir?

A. If I remember right, I think he did that out of our main office in Moundridge.

Q. Okay. But isn't this an interview with you, the way it's reflected?

A. The way it's reflected, he got the information that he could from me; and then he proceeded to do the ticket documentation from another location.

Q. And if you look on the second page, where it says,

Frederick Schlender - Cross

"Schlender reviewed the file of original white" --

MR. MEARNS: Objection.

THE COURT: Just a moment.

MR. MEARNS: Objection to reading from the document, your Honor.

MR. WOODS: Let me just refer him to the paragraph.

THE COURT: Yes.

BY MR. WOODS:

Q. Have you read the last paragraph that's on that second page right above the chart?

A. Yes, I do; but I did not read the -- because I could not review the white copies. They are not at our location.

Q. But Mr. West represents that you did?

A. He wrote it that way.

Q. As of September 30, '94, on this chart, what did the records of McPherson reflect that your inventory was in number of bags?

A. At the end of the 30th was eight bags.

Q. Okay. And then the first half of October, you sold a number of bags before you got that shipment of 200 bags in, didn't you?

A. Yes, we did.

Q. In fact, it shows that you kept having a negative balance. You even got up to a negative balance of 31 bags in October?

MR. MEARNS: Objection, your Honor, to what the report

Frederick Schlender - Cross
says, as opposed to the witness' recollection.

THE COURT: I think we have to separate out in your question what he remembers and what this report says.

MR. WOODS: Yes, your Honor.

BY MR. WOODS:

Q. Do you recall sales during the month of October as reflected in this chart?

A. The sales in October are reflected on this chart, yes.

May I also add that we do not keep track of transfers within the company; that the inbound was only that that was brought in on a truckload.

Q. So if you have records reflecting that you have a negative balance in bags of fertilizer in your co-op, they're not accurate?

A. The only thing we keep track of on that inbound that I gave Mr. West is the inbound that came in on a semi, not what was intertransfers within the company. We don't have to keep track of that.

Q. So do you know for sure, then, that your records are accurate as to the shipment of fertilizer out of there?

A. As far as the shipment out is taken from the counter tickets. Yes, they're accurate.

Q. But your inventory records won't reflect it; is that correct?

A. The actual inventory records that we dealt with on the

Frederick Schlender - Cross
September and -- beginning of September and end of October are accurate.

Q. But the records on a day-to-day basis are not?

Q. But the records on a day to day basis are not:

A. No, they aren't.

Q. Because you don't keep count of what goes out and what comes in?

A. No, we did not keep track of the disbursement.

MR. WOODS: Thank you, your Honor. No further questions.

THE COURT: All right. You have some redirect?

MR. MEARNS: Just very briefly, your Honor.

May I have just a moment to speak to Mr. Mackey?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. MEARNS:

Q. I'd like to go back to some of the questions Mr. Woods asked you about photographs of pickup trucks that were shown to you.

A. That's correct.

Q. Tell us what you said when the first photographs of the pickup truck -- of a pickup truck were shown to you.

A. First time I was shown that, I didn't agree with the one photograph where I couldn't see through the back. It looked like it had a real colored-type glass, and I did not remember that being that way on the vehicle that picked up the ammonium

Frederick Schlender - Redirect
nitrate.

Q. What about the photographs of the trailers that were shown to you?

A. Also, they focused in on one trailer. I did not agree with that when they first showed me the trailers, also.

Q. With respect to your meetings with agents and prosecutors, did anyone from law enforcement, an agent or a prosecutor, ever tell you that the photograph of the pickup truck that you were looking at was Mr. Nichols' pickup truck?

A. No, they did not.

Q. During any of the meetings with agents and prosecutors, did anyone ever tell you what or suggest to you what you should say?

A. No, they did not.

Q. Did anyone ever tell you -- any agent or prosecutor ever tell you there were any problems with your recollection or testimony?

A. No, they did not.

Q. With respect to the tax-exemption certificate that Mr. Woods asked you about --

A. That's correct.

Q. -- what did the customer, Mr. Havens, say on October 18 that he intended to do with the fertilizer?

A. He intended to plant -- apply this when he was planting wheat.

Frederick Schlender - Redirect

Q. What is the purpose, or what qualifies for a tax exemption,

a sales-tax exemption?

A. It has to be an agricultural input, so that would qualify for it.

Q. That is what this customer said would qualify for the tax exemption?

A. Yes, it would.

Q. Finally with respect to the inventory records that you were asked about, Mr. Woods asked you about a negative balance. Do you recall that?

A. Yes, he did.

Q. If somebody were to go and compute or try to compute what kind of inventory you had on a daily basis by looking at the Moundridge records --

A. Uh-huh.

Q. You understand what I'm asking you?

A. Right.

Q. If someone were to do that, would that accurately reflect the daily inventory at your branch, McPherson branch?

A. The Moundridge record, if it's the whole company's, no, it would not reflect our inventory. No.

Q. Why not?

A. Because they would have all the other sales records of the other branches of our company.

Q. And by simply reviewing your sales receipts, it wouldn't

Frederick Schlender - Redirect

reflect interbranch transfers; that is, transfers of inventory from one branch to another?

A. Interbranch transfers are not documented, no.

Q. With respect to your recollection about the pickup truck and about this customer who identified himself as Mike Havens, are there certain aspects of those transactions that you're certain about?

A. Yes, I am. I'm certain about the description, as I said, the individual, being the 5' 8" to 6-foot.

Q. And are you certain of whether or not that individual was Mr. McVeigh, the person depicted in Government's Exhibit 318?

A. It was not Mr. McVeigh.

Q. Are you certain about or more certain about aspects of the pickup truck that you described?

A. The most certain I am on the pickup I described was the dark-colored and the light-colored topper.

Q. And what about the trailer?

A. The trailer -- the pickup-style trailer and red in color.

Q. What about any other details of the trailer?

A. The white lettering on the end gate.

MR. MEARNS: No further questions, your Honor.

MR. WOODS: Just a couple, your Honor.

THE COURT: All right.

REXCROSS-EXAMINATION

BY MR. WOODS:

Frederick Schlender - Recross

Q. Mr. Schlender, if you would, go back to that document I handed you that Mr. West prepared. And on page 4, last paragraph, he's reflecting conversation he had with you.

A. Yes.

Q. Do you recall that conversation?

A. Yes, I did tell him that we do not keep track of intercompany (sic) transfers.

Q. And in fact, he was asking you why this big disparity in the records of what's on hand and what -- physical counting and what the records show, wasn't he?

A. Yes, he was.

Q. And you explained that sometimes you have intertransfers, interoffice transfers?

A. Intercompany transfers.

Q. But then you told him that you could not specifically remember any such shipment?

A. I had the bill of lading from that shipment of that 200 bags.

Q. Well, the 200 bags, we understand. We're talking about the 69-bag disparity on the daily inventory.

A. No, I could not exactly detail when that date those bags would have come in on the intercompany transfer.

Q. Right. You told him you could not specifically remember such a shipment?

A. No, not specifically, no.

Frederick Schlender - Recross

Q. Now, when you described the individual to the FBI and to the grand jury and to the Court, did you describe the individual who made the purchase as having glasses?

A. No, I did not.

MR. WOODS: Thank you very much, sir.

MR. MEARNS: Two questions, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. MEARNS:

Q. Do you recall whether the individual who identified himself as Mike Havens wore glasses?

A. No, I can't recall seeing glasses.

Q. With respect to the two transactions on September 30 and October 18, are you certain that you loaded 2 tons of ammonium nitrate, 1 ton of ammonium nitrate on each of those occasions?

A. Yes, I am.

Q. Any doubt about that?

A. No doubt about that.

THE COURT: Are you excusing the witness?

MR. MEARNS: I'm sorry. Yes, your Honor.

MR. WOODS: We have agreed to excuse him, your Honor.

THE COURT: All right. You may step down. You're

now
excused.

Members of the jury, I might mention that this
witness

when asked also talked about previous testimony in February at

when asked also talked about previous testimony in February at a hearing. He's referring to a time when there was a hearing before the Court on motions. There are a number of -- in cases normally -- a number of motions that are heard by the court before the trial ever begins on various legal matters, and sometimes witnesses appear there.

So, you know, you shouldn't speculate about what that testimony was beyond -- or the purpose of it beyond what the witness testified about here. So don't think that there has been a previous trial or something like that. It referred to motions on legal issues that the Court resolved.

MR. WOODS: Thank you, your Honor.

THE COURT: Next witness.

MR. MACKEY: We would next call Jerry Showalter.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Jerry Showalter 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: Jerry Showalter, S-H-O-W-A-L-T-E-R.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Good afternoon, Mr. Showalter. Where do you live, sir?

A. McPherson, Kansas.

Q. How long have you lived in McPherson?

Jerry Showalter - Direct

A. 17 1/2 years.

Q. How long have you lived in Kansas?

A. All my life.

Q. Are you married?

A. Yes.

Q. Do you have any children?

A. I have two.

Q. Are they boys, or girls?

A. Both girls.

Q. How old are your girls?

A. 22 and 18.

Q. What kind of education have you received?

A. I've got a bachelor of science degree from Kansas State University.

Q. When did you graduate from Kansas State?

A. 1974.

Q. And what was your major in college?

A. Biology.

Q. Where do you work?

A. Mid-Kansas Co-op.

Q. How long have you worked at the co-op?

A. About 18 1/2 years.

Q. What is your position there?

A. Sales and service.

Q. What is the Mid-Kansas Co-op?

Jerry Showalter - Direct

A. It's a farmers' owned organization that supplies fertilizer and agricultural products to farmers.

Q. And are there more than one branch of the co-op?

A. Yes.

Q. What branch do you work at?

A. I work at McPherson.

Q. Describe your duties and responsibilities.

A. I take care of customers as they come through the door, writing sales tickets, carrying out feed, fix tires, sell fertilizer, load fertilizer.

Q. And what are your normal working hours?

A. I go to work at 7:30 and get off at 5:30.

Q. How many days a week?

A. Five days and a half day Saturday.

Q. What are your hours on Saturday?

A. 7:30 to noon.

Q. In the fall of 1994, how many employees were working at the McPherson branch of the co-op?

A. There were four.

Q. About how many customers, again in the fall of 1994 -- about how many customers on a typical day came into the McPherson store?

A. On a slower day, there would be 75. On a busy day, around 150.

Q. And are there periods during the day when the McPherson

Jerry Showalter - Direct

branch is more busy than other times?

A. Yes.

Q. When is it more busy?

A. Usually the first couple hours of the morning and the last couple hours of the day.

Q. What I want to do is direct your attention to a specific transaction in the fall of 1994. Okay? Were you working in the co-op at the McPherson branch of the co-op in September of 1994?

A. Yes, I was.

Q. Do you recall ever selling 2,000 pounds or 1 ton of ammonium nitrate fertilizer to a man who identified himself as Mike Havens?

A. Yes, I do.

Q. What do you recall about that transaction?

A. That the man came through and had requested the day before by phone call that if we had ammonium nitrate in that quantity; and we told him yes, and he came through the door --

Q. Let me interrupt you for just a second. You're saying that something happened the day before the actual transaction?

A. Yes.

Q. What date did the transaction take place?

A. The day after we -- what do you mean?

Q. What day did you actually sell 2,000 pounds of ammonium

nitrate in September? What was the date?

Jerry Showalter - Direct

A. It was at the 30th, I believe.

Q. So what happened the day before, September 29?

A. We received a phone call from our location in Galva, Kansas.

Q. Who called you?

A. Stuart Vogts.

Q. Who is Stuart Vogts?

A. He's the location manager of the Galva branch.

Q. Where is Galva in relation to McPherson?

A. Approximately 7 miles east.

Q. If I could ask you to look at what is in evidence as Government's Exhibit 2045.

Actually, you can look on your computer screen,

Mr. Showalter. Got it there?

A. Got it.

Q. Do you see McPherson on the map?

A. Yes, I do.

Q. Could you circle McPherson for us?

A. Let me find out where I'm at.

Q. You actually have to reach underneath the screen with your pen.

There you go.

A. Right there.

Q. Okay. Now, you've put a mark there just to the east --

A. That's actually where Galva is. I'm sorry.

Jerry Showalter - Direct

Q. And it's along that highway?

A. Yes, it is.

Q. That's that highway between Marion and McPherson?

A. That's correct.

Q. And that's where Mr. Vogts is the branch manager?

A. That's correct.

Q. What did Mr. Vogts ask you?

A. He asked if we had 2-ton or 4,000 pounds of ammonium nitrate on hand.

Q. What did you do in response to that question?

A. I told him I would have to check our inventory and if he'd hold on a minute, I could do that and be right back with him.

Q. What did you do?

A. I went out the door and over to the warehouse to make sure what we had on hand.

Q. What did you see when you got inside the warehouse?

A. We had a full pallet and a part of a pallet of ammonium nitrate.

Q. How much is a full pallet?

A. A full pallet is 40 bags.

Q. And that's 2,000 pounds?

A. 2,000 pounds.

Q. What did you do next?

A. I told Mr. Vogts what we had it available and on hand.

Q. Did he say anything in response?

Jerry Showalter - Direct

A. He said that there would be a customer over to pick up 1 ton of ammonium nitrate.

Q. And did that customer then come in September 29?

A. No. He came in the next day.

Q. And tell us about that.

A. He walked through the door and he informed me that he had been in Galva the day before and had -- they had made a phone call and he was there to pick up that ammonium nitrate.

Q. What time of the day did this customer come in on September 30?

A. 3:30, 4:00, somewhere in there.

Q. What happened next?

A. I asked him would this be cash or charge, started making out a ticket, and asked him about whether he wanted to pay sales tax on it or how he wanted to handle that, because he was not a regular customer.

Q. You recognized -- or you didn't recognize this person as a regular customer?

A. Right.

Q. Are many of the customers that come in on a typical day people that you recognize?

A. I recognize most of the people who do come in.

Q. About how -- what percentage, if you could give us a percentage, of the customers that you typically recognize?

A. Probably about 85, 90 percent of them.

Jerry Showalter - Direct

Q. What happened next?

A. I -- he told me that he did not want to pay -- he wanted to pay taxes -- the taxes and he would be paying cash for the purchase.

Q. Did you ask him what he intended to do with the ammonium nitrate fertilizer?

A. Yes, I did. I asked him what his intentions were, and he told me that he was going to use it to plant wheat through the drill.

Q. Could you explain what you understood him to mean?

A. I understood him to mean that he was going to put the fertilizer through a drill directly into the ground with the seed wheat.

Q. Did this man say where he was planning to plant the wheat and fertilize it?

A. He said he had a small farm that he just purchased in the Flint Hills.

Q. Where are the Flint Hills?

A. East of Marion.

Q. Looking at the map that's on your screen, 2045, could you put a -- some kind of a mark with your pen where the Flint

put a little some kind of a mark with your pen where the Flint Hills area of Kansas is.

A. Well, actually, it runs down along this neighborhood here.

Q. So it's essentially a little bit north and east of Council Grove and a little bit south and west of Council Grove?

Jerry Showalter - Direct

A. Right.

Q. What did you say when this customer said that that's what he was going to use the ammonium nitrate for?

A. I told him that I wasn't sure that was a good idea because that type of fertilizer can cause damage to the seed germination in the new crop that is growing if it gets in contact with it.

Q. What kind of damage would the ammonium nitrate cause to the wheat seeds?

A. Probably kill it.

Q. What was your major in college?

A. Biology.

Q. And by the time that this was, September of 1994, how long had you been working in the farm-supply business?

A. Would have been about 16 years.

Q. What did this customer say when you warned him about the danger of using ammonium nitrate that way?

A. He said he was aware of the problems that could result; that his dad had done that before him and he was comfortable with the idea.

Q. During this conversation with this customer, did he seem to you to be knowledgeable about farming?

A. He seemed to know what he was talking about on this aspect, yes.

Q. In the fall of 1994, was it common for farmers to use

Jerry Showalter - Direct

ammonium nitrate to fertilize wheat in the way that this customer had described?

A. No. It was very uncommon.

Q. Was it ever -- was there ever a time when it was common to fertilize wheat seedlings in the way he described?

A. It was not common to use that fertilizer the way I described it, but it was a common fertilizer to use on wheat.

Q. When was it common to use ammonium nitrate on wheat?

A. Early to middle 60's.

Q. In the fall of 1994, what did farmers commonly use to fertilize wheat?

A. Generally on the way that he was using it, they used fertilizer 18-46, which is 18 percent nitrogen and 46 percent phosphate.

Q. Did farmers use any other ways to fertilize wheat in fall of '94?

A. They would over top grass -- overlay the ground once it had been planted with either liquid fertilizer or dry-broadcast on.

Q. Did the McPherson branch of the co-op sell that kind of fertilizers that you've just described?

A. Yes, we do.

Q. Was it common for you to sell those kinds of fertilizers?

A. Yes, it is.

Q. Was there any advantage to using those kind of fertilizers as opposed to ammonium nitrate to fertilize wheat?

Jerry Showalter - Direct

A. It was easier to do and more economical.

Q. In the fall of 1994, though, the McPherson branch of the co-op sold ammonium nitrate on a regular basis?

A. Yes, we did.

Q. What did most people buy ammonium nitrate for?

A. Most of the ammonium nitrate was used as an economical fast-green lawn fertilizer.

Q. Did you complete a receipt for this transaction that you just described?

A. Yes, I did.

Q. Let me show you what's already in evidence as Government's Exhibit 73, please.

And if you would click -- actually, Mr. Showalter --

A. Oh, at the -- down there.

Q. And you could click your pen, if you would.

A. Yes.

Q. Is that the receipt that you prepared that day?

A. That is the receipt.

Q. And do you see your initials on that receipt?

A. Yes, I do.

Q. Could you circle where your initials are.

A. They're right there.

Q. Above that, there is a notation, the number 10.

A. Yes.

Q. What does that notation mean?

Jerry Showalter - Direct

A. That's the computer file notation for a cash sale.

Q. And does it indicate one way or another whether the customer is a member of the co-op?

A. It says he is not.

Q. And just below that, it says the name Mike Havens.

A. Yes.

Q. Who wrote that there?

A. I did.

Q. Where did you get the name to write there?

A. That was the name he gave me.

Q. And the date that's reflected in the upper right-hand corner is September 30, '94?

A. Yes.

Q. And just below that, there is the item that you sold that day; correct?

A. That's correct.

Q. Okay. Could you tell us what that means.
A. There are forty 50-pound bags of ammonium nitrate, 34-0-0.
Q. And that 34-0-0 is the notation for ammonium nitrate?
A. Right.
Q. What is the purchase price as reflected on that receipt per bag?
A. \$5.40 a bag.
Q. Down in the lower right-hand corner, there was an entry there above the total purchase price. Do you see that?

Jerry Showalter - Direct

A. Yes.
Q. What is that price or charge there?
A. That's the sales tax.
Q. And you had a conversation with this customer about the sales tax?
A. Yes, I did.
Q. What happened next in the transaction after you completed this receipt?
A. I sent him out to the warehouse to have it loaded.
Q. Did you load the fertilizer for the customer that day?
A. I do not recall for sure.
Q. During your conversation on September 30 with this customer, did you have any further conversation about his second ton of ammonium nitrate?
A. Yes. He had inquired as to when we would be able to get the second ton in.
Q. And what did you say in response?
A. I told him we had an order pending and it should be in within two weeks.
Q. And do you recall, reflecting back to the fall of 1994, whether the McPherson branch in fact got further supplies of ammonium nitrate within that time frame?
A. Yes, we did.
Q. During this transaction, how long did you have an opportunity to observe this customer who identified himself as

Jerry Showalter - Direct

Mike Havens?

A. The total transaction probably took 3 to 5 minutes.
Q. Let me show you Government's Exhibit 68, which is in evidence. Is this the customer area of the co-op?
A. Yes, it is.
Q. And was this the area in which you had your conversation with this man on September 30?
A. Yes, it is.
Q. And what -- describe the lighting that was inside the store that day.
A. Well, right off the back side of this counter, there is an 8-foot, two-tube fluorescent fixture which supplies an ample amount of light.
Q. And did you get a good look at this man's face?
A. Yes, I did.

A. Yes, I did.

Q. Could you describe the man who identified himself as Mike Havens?

A. Yes.

Q. Okay. What race or ethnic background?

A. He was a Caucasian.

Q. And about how old was he?

A. Late 30's, early 40's.

Q. Do you recall how tall he was?

A. He was approximately my height.

Q. And how tall is that?

Jerry Showalter - Direct

A. 5' 9", 5' 10", somewhere in there.

Q. Do you recall his weight or his build?

A. He was an average-build person.

Q. Do you recall the color of his hair?

A. It was a dark color.

Q. Do you recall the length of the hair?

A. It was relatively short and well-trimmed.

Q. When you say "dark," is it brown, black?

A. Dark brown or black.

Q. Did the man have any facial hair, beard, mustache?

A. Not that I recall.

Q. Was he, in fact, clean-shaven?

A. I believe so.

Q. And how was he dressed?

A. He was dressed above average for the normal farm customer that comes in. He was wearing slacks and a sport shirt.

Q. Did he speak with any identifiable accent?

A. No.

Q. You were first contacted about this transaction shortly after the explosion in Oklahoma City. Is that correct?

A. That's correct.

Q. When in relation to the explosion in Oklahoma City were you first interviewed by the FBI about this transaction?

A. Approximately two weeks.

Q. And where was that interview conducted?

Jerry Showalter - Direct

A. At the co-op.

Q. Do you recall what day of the week it was?

A. Sunday.

Q. When were you notified that the FBI wanted to interview you about this transaction?

A. Approximately 11:00 in the morning.

Q. And when were you, in fact, interviewed?

A. Around 2.

Q. Do you recall what you said to the agents during that interview?

A. Yes, I do.

Q. Did you provide all of the details about the transaction that you've testified to today?

A. I did not.

Q. Now, finally, I'd like to show you what's been marked in evidence as Government's Exhibit 318. Do you recognize that as a photograph of Timothy McVeigh?

A. I do.

Q. Does this pic -- that is, the picture of Timothy McVeigh -- is this the person who purchased 1 ton of ammonium nitrate from you on September 30, 1994?

A. No, sir, it is not.

Q. Do you have any doubt about that?

A. I have no doubt at all.

MR. MEARNS: No further questions.

Jerry Showalter - Cross

THE COURT: Mr. Woods?

MR. WOODS: Yes, your Honor. Thank you.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good afternoon, Mr. Showalter. My name is Ron Woods. I'm one of the lawyers who has been appointed to represent Terry Nichols.

You and I have never met. Is that correct?

A. That's correct.

Q. Okay. You told the prosecutor that when the FBI first came to talk to you -- and they talked to you three times that week -- that you didn't tell them what you're telling the jury here today, did you?

A. No, I did not.

Q. In fact, the FBI came by for the first time on the 27th. Do you know what day that was?

A. No, sir, I do not.

Q. When you and Ms. Schaefer were in the office -- Tell the jury who Donna Schaefer is.

A. She's the secretary/bookkeeper there.

Q. Do you remember FBI Agent Rayhart and then an ATF agent by the name of Ken Coffey coming by? This is when they were doing their original canvassing of all the dealers. This is on April 27, which would be a Thursday after the bombing. Do you remember them coming by and asking you about any large

Jerry Showalter - Cross

purchases of ammonium nitrate?

A. Yes, sir, I do.

Q. And they showed you some drawings of John Doe 1 and 2?

A. That's correct.

Q. And showed you a photo of people they had arrested, Mr. McVeigh and Mr. Nichols?

A. I do not recall the photos.

Q. Okay. They showed you some photographs, didn't they?

A. I don't recall seeing any photographs.

Q. If their memo reflected that they showed you photographs and composites, would that be incorrect?

A. They showed the composites. They may have shown photographs, but I do not recall it.

Q. And you told them at that time -- this is a week after the bombing -- you had no recollection of any large purchases there at the co-op other than the NCRA buying ammonium nitrate. Tell the jury what NCRA is.

A. NCRA is National Co-op Refinery Association. It's an oil refinery in town.

Q. And what were they buying ammonium nitrate for?

A. Lawn fertilizer.

Q. And you told the FBI about that, didn't you?

A. That's correct.

Q. And then three days later on Sunday, Agent Coffey with the FBI -- excuse me -- with the ATF and Agent Budke, B-U-D-K-E --

Jerry Showalter - Cross
remember him?

A. I remember the meeting.

Q. The FBI agent that interviewed you and took notes?

A. I remember the meeting.

Q. Pardon me?

A. I remember the meeting.

Q. Okay. And he -- by that time, you all had located the ticket for September 30; is that correct?

A. That's correct.

Q. And he asked you your recollection of that transaction?

A. That's correct.

Q. And you told him you had no recollection of that transaction?

A. I told him that I made the ticket out, it was a cash sale, not check, and it was for 40 bags of ammonium nitrate.

Q. And you told him you didn't have any idea who Mike Havens was and couldn't give a description?

A. That's correct.

Q. Okay. And you said -- you looked at the sales tickets -- actually, they came back two days later on May 2. Remember that interview that they came back for the third time?

A. Yes, I do.

Q. And tried to pinpoint a time that the transaction occurred by looking at the sequence of the sales tickets for that day?

A. That's correct.

Jerry Showalter - Cross

Q. Remember that?

A. Yes, sir.

Q. And you picked the time as being in the afternoon; is that correct?

A. That's correct.

Q. Okay. And you told them that based on these sequence of sales tickets that you were the one who likely loaded this order up because you didn't write up the subsequent sales ticket?

A. No, sir.

Q. Do you recall telling them that?

A. I wrote up that sales ticket that they had for September 30.

Q. Exactly. But then didn't you tell them that you were likely the one that loaded it because you didn't write up the next sales ticket?

A. That's possible, yes.

Q. Okay. Have you reviewed those memorandum (sic) that the FBI wrote up of those three interviews with you?

A. No, sir, I have not.

Q. The Government didn't share those with you?

A. We had discussed some of it, but they did not show me the memorandums, no.

Q. When you discussed some of it, what do you mean?

A. Well, basically we discussed as to how we pinpointed the

Jerry Showalter - Cross

time according to the number of tickets before and after.

Q. Did they read these memorandum of interview to you?

A. No, sir, they did not.

Q. And didn't let you read them?

A. I did not ask, and they did not offer.

Q. Now, this was May, '95. You're telling the Government you don't have any recollection of the transaction. Is that correct?

A. That's correct.

Q. And then you're aware the grand jury met and returned an indictment in August, '95?

A. Yes, sir.

Q. Okay. Because some of your people went down there; right?

Mr. Showalter -- excuse me -- Mr. Schlender went to grand jury. You're aware of that?

A. I was not aware of that, no.

Q. You didn't know that?

A. I did not know where he went. He took some time off, but that's all I know.

Q. Okay. How many people work there in McPherson branch?

A. Then, or now?

Q. At that time.

A. Four.

Q. Okay. And then you started meeting with the FBI agent,

Mr. Hersley over here, and Mr. Mendeloff; is that correct?

Jerry Showalter - Cross

A. That's correct.

Q. And when was that meeting, the first one, because you've had a number, but --

A. I can't remember the explicit time frame on it. I think it was in -- in the late fall, I believe.

Q. Late fall of what year?

A. That same year.

Q. '95?

x. . . .

A. I believe. I don't --

Q. Keep in mind we're in '97.

A. Yeah.

Q. I'm not trying to put words in your mouth. I'm just trying to --

A. I just -- I don't recall the exact time frame of it, no.

Q. Okay. Where was the first meeting that you met with the FBI agent and the prosecutor?

A. It was at the local law enforcement center across the street from the co-op.

Q. Okay. Can you give us an estimation of the month and year?

A. Well, let's see. I believe it was about a year ago last October. That would be '96.

Q. Okay. Okay. Is that your best recollection --

A. It's my best --

Q. -- when the meeting started?

A. That's my best recollection, yes.

Jerry Showalter - Cross

Q. And who was present at the meeting?

A. Mr. Hersley and Mr. Mendeloff and myself.

Q. Okay. And was it at that time that you began to recall the event and could describe the person?

A. It was during those meetings, yes.

Q. How many meetings did you have?

A. Well, it was during the first meeting, yes. I had three meetings with Mr. Hersley and Mr. Mendeloff.

Q. What period of time did the meetings take place? When you say three, the first one you've pinpointed is October, '96. When was the second one?

A. Trying to -- let's see. This is '97. The last one was just before Thanksgiving of '96, so they would have been in -- that would have been the last one. The first one would have had to have been sooner than October. I just do not recall the exact time frames.

Q. Okay. And those were meetings with Mr. Hersley with the FBI and Mr. Mendeloff, one of the prosecutors?

A. That is correct.

Q. And then you started meeting with Mr. Mearns, a new prosecutor on the team; is that correct?

A. That is correct.

Q. And do you recall when you first met with him?

A. I first met with him in July, first part of July, this year.

Jerry Showalter - Cross

Q. Okay. And how many meetings have you had with him?

A. I have met with him four times.

Q. Okay. And what -- can you give us the months that you met with him?

A. I met with him in July. He was -- in August and then again

in September.

Q. Okay. And then you met with him, I assume --

A. And then this week.

Q. How many times have you met with him this week?

A. Just once.

Q. And when was that?

A. Monday evening.

Q. How long did that meeting last?

A. Approximately an hour.

Q. Okay. And your now testimony is that you can describe the individual -- is that correct -- and have a recollection of phone calls and everything?

A. Yes, sir.

Q. Okay. Do you know what time that phone call was that came from Stuart Vogts over in the Galva branch on September 29?

A. Middle to the late morning.

Q. Had you seen the phone records of the co-op that shows the

long distance calls?

A. They showed me that record once, yes.

Q. What time was that phone call?

Jerry Showalter - Cross

A. If I recall, it was 10:38 or something like that on the records.

Q. Was there also a call at 10:04?

A. I do not remember.

Q. Between Galva and McPherson?

A. It's possible. We call locations quite regularly.

Q. Was the FBI telling you that it's the 10:30 phone call?

A. No, sir, they did not.

Q. What did they show you the records for?

A. They showed me the records the second meeting -- the meeting after I told them about the phone call.

Q. Okay. And did they -- what was the purpose of showing you the records?

MR. MEARNS: Objection.

THE COURT: Sustained.

BY MR. WOODS:

Q. What did they say when they showed you the phone record between Galva and McPherson -- the phone call?

A. They just showed me the records. We had been discussing what I had told them the meeting before, and they showed me the record of the phone call.

Q. Okay. Is your now recollection three years later -- is it your recollection that the man was wearing glasses when you had the transaction with him?

A. I do not recall whether the glasses were -- there were

Jerry Showalter - Cross

glasses or not.

MR. WOODS: Okay. Thank you, sir, for your testimony

now.

THE COURT: Any redirect?

MR. MEARNS: Briefly, your Honor.

REDIRECT EXAMINATION

BY MR. MEARNS:

Q. Mr. Woods indicated to you that you and he had never met. Is that correct?

A. That's correct.

Q. Were you recently interviewed by an investigator from Mr. Nichols' defense team?

A. Yes, I was.

Q. When was that interview approximately?

A. Approximately three weeks ago or so.

Q. And where was that interview?

A. At the co-op.

Q. Did you answer all of the investigator's questions?

A. I asked -- answered everything he asked.

Q. Did he ask you why it was that you told the FBI initially that you couldn't recall the details of the transaction?

A. He did not.

Q. Why did you not tell the FBI initially?

A. Fear.

Q. Excuse me?

Jerry Showalter - Redirect

A. Fear.

Q. You were asked by Mr. Woods about Mr. Schlender's possible appearance before the grand jury. Do you recall that question?

A. Yes, I do.

Q. Have you ever spoke with Mr. Schlender about this transaction of September 30, 1994?

A. It was requested that we did not -- do not -- not to discuss the transaction, and we have not.

Q. Who asked you not to speak about it?

A. The FBI.

Q. With respect to your meetings with various prosecutors and agents, during any of those meetings, did the agents or prosecutors ever tell you what to say?

A. They never did.

Q. Did they ever suggest to you what your testimony should be?

A. They never did.

MR. MEARNS: No further questions, your Honor.

MR. WOODS: Nothing further, your Honor.

THE COURT: All right. This witness now excused?

MR. MEARNS: Yes, your Honor.

THE COURT: Is that agreed?

MR. WOODS: Yes, your Honor.

THE COURT: You may step down. You're excused.

Next, please.

MR. MACKEY: Your Honor, we'd call FBI Agent Mary Jasnowski.

THE COURT: All right.

THE COURTROOM DEPUTY: Raise your right hand.

(Mary Jasnowski affirmed.)

THE COURTROOM DEPUTY: Would you have a seat please

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: My name is Mary Y. Jasnowski,
J-A-S-N-O-W-S-K-I.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. MEARNS:

Q. Good afternoon, ma'am.

A. Good afternoon.

Q. How are you employed?

A. I'm a special agent with the Federal Bureau of Investigation.

Q. How long have you been an FBI agent?

A. Since 1978.

Q. Prior to joining the FBI, where did you go to college?

A. I went undergrad to the University of Nebraska at Lincoln.

Q. When did you graduate?

A. In 1974.

Q. And what was your major?

A. I majored in Russian.

Mary Jasnowski - Direct

Q. What did you do after graduating from college?

A. I went to law school.

Q. Where did you go to law school?

A. At the University of Notre Dame.

Q. When did you graduate from law school?

A. In 1977.

Q. And what did you do after graduating from law school?

A. Well, I applied for and became a special agent with the FBI.

Q. What training have you received during your nearly 20 years as an FBI agent?

A. Well, in addition to the initial training that I received as an FBI agent, I've received training in evidence recovery and collection, homicide investigations, blood splatter study, post-blast investigations.

Q. And what kind of experience have you had in the FBI?

A. I've been in four offices in the FBI, and in those offices I've worked white-collar crimes, I've worked -- assisted in criminal matters and worked foreign counterintelligence as well.

Q. Where are you presently assigned?

A. I'm assigned to the Omaha division.

Q. That's Omaha, Nebraska?

A. Yes, Omaha, Nebraska. It covers all of Nebraska and Iowa.

Q. How long have you been assigned in the Omaha field office?

Mary Jasnowski - Direct

A. Since January of 1995.

Q. What are your present duties and responsibilities?

A. Well, I basically serve as the chief division counsel for

the Omaha division.

Q. What is the chief division counsel?

A. I'm basically the legal officer. I advise the special agent in charge. I conduct training for agents and for police officers and other law enforcement officers. I also handle any kind of administrative claims or lawsuits that are filed against the FBI in the Omaha division.

Q. What -- You identified a position within the FBI as the special agent in charge. What is that?

A. He's basically the head of the Omaha office or of any office.

Q. Do you have any other duties and responsibilities in the Omaha office?

A. Yes. I'm the Evidence Response Team coordinator for the Omaha office.

Q. What is the Evidence Response Team?

A. Well, the Evidence Response Team is basically a relatively new development in the FBI. Each office -- each field office in the FBI has an Evidence Response Team now, but it's gradually developed over the years. What we do -- it's a group of agents and support personnel who specialize in the collection and custody of evidence in searches.

Mary Jasnowski - Direct

Q. Have you received any training in connection with your duties with the Evidence Response Team?

A. Yes, I have.

Q. What kind of training have you received?

A. Well, in addition to the -- the initial Evidence Response Team training and fingerprints, retrieval and collection, I've also received training, as I said before, in the blood splatter, the death-scene investigations, the post-blast investigations, and similar seminars.

Q. You told us that you're the Evidence Response Team coordinator. What does that mean, to be the coordinator?

A. Well, that is the -- basically within each field office, that's the administrator for the Evidence Response Team. I make sure that we have enough people on the Evidence Response Team; that they get the training that they receive -- that they require; that the supplies are there, things of that nature. But more in the administrative -- in the administrative realm, rather than hands-on.

Q. So you're essentially a supervisor for the Omaha Evidence Response Team?

A. Yes.

Q. Is there also somebody who serves in the capacity as the team leader?

A. Yes. That's an agent who actually handles the day-to-day searches, who actually will go out on the searches and direct

Mary Jasnowski - Direct

people as to what their assignments will be during a search.

Q. Are you presently the team leader for the Omaha Evidence Response Team?

A. No, I'm not.

Q. Were you ever the team leader?

A. Yes, I was.

Q. When was that?

A. When I first took on the position, I was -- served as the coordinator and the team leader.

Q. And for how long were you the team leader?

A. Probably until February of '96.

Q. Prior to April of 1995, how many searches had you participated in?

A. In the Omaha division, only one; but in my other division, Chicago, approximately 20 to 25.

Q. And how many had you participated in as the Evidence Response Team leader?

A. Three.

Q. Directing your attention now to Friday, April 21, 1995, do you recall that day?

A. Yes, I do.

Q. Where were you that morning?

A. That morning, I was in Des Moines, Iowa, attending a session of the National Academy Associates that we had there.

Q. Did you return to Omaha that day?

Mary Jasnowski - Direct

A. Yes. Later that afternoon, I returned to Omaha.

Q. What happened when you returned to Omaha that day?

A. Well, the special agent in charge told me to collect the Evidence Response Team and to report to Fort Riley, Kansas, to assist the Kansas City division.

Q. At the time that you were given that assignment, did you know what investigation that assignment related to?

A. Yes. It was in connection with the bombing of the Murrah Federal Building.

Q. And that was -- that had occurred two days earlier on April 19?

A. That is correct.

Q. What did you do after receiving that assignment?

A. Well, I assembled the supplies that we had on hand there and was able to round up people for the evidence team from the evidence team and told them what to wear and how to report; and I set off for Kansas myself.

Q. How did you get to Kansas?

A. I drove.

Q. And where did you go when you got to Kansas?

A. I drove to Fort Riley, to the military police headquarters there.

Q. Was there some kind of a command post set up there at that time?

A. Yes, there was.

Mary Jasnowski - Direct

Mary JASNOWSKI - DIRECT

Q. What kind of a command post was set up there?

A. Well, the Kansas City division had an assistant special agent in charge there and a number of agents that were there manning a command post.

Q. And approximately what time did you arrive at Fort Riley on April 21?

A. Between 6 and 7 p.m.

Q. Did you conduct any investigative activities that day, April 21?

A. No. No, we did not.

Q. What did you do the next morning?

A. The next morning, we went to the Junction City -- well, first of all, we went back to the command post and gathered up some extra supplies from the military police and went to the Junction City airport, where we picked up some individuals that we were told were flying in from our FBI headquarters to assist in any searches that we would conduct.

Q. Who did you pick up that morning?

A. We picked up four people: Gene Grindstaff -- Eugene Grindstaff, who is a latent print photographer; Lou Hupp, who was a fingerprint processor; Steve -- Supervisory Special Agent Steven Burmeister, and Ron Kelly, who is a chemist from the lab.

Q. Where did you go then?

A. We drove down to Herington, Kansas, to the Public Safety

Mary JASNOWSKI - DIRECT

Building, which was set up as a command post there.

Q. When you arrived, did you receive an assignment?

A. Yes, we did.

Q. What was your -- what was your assignment at that point?

A. We were told to go to a storage shed not far from the command post and to make some plaster casts of ruts that had been discovered there.

Q. Okay. The command post at that point was where in Kansas?

A. Herington.

Q. And did you go pursuant to that assignment -- did you go to a storage facility in Herington?

A. Yes, we did.

Q. What did you see when you got there?

A. When we got there, there were FBI agents on the scene from the Kansas City division. There was an area that was roped off, and we saw the storage units that they were interested in as well as ruts in front of the storage units.

Q. What do you mean by "ruts"?

A. Where something, either a car or a truck, had made impressions in the soil.

Q. And did you -- your assignment then was to make impressions of those ruts or tracks?

A. Yes.

Q. Did you do that that day?

A. No, we did not.

Mary Jasnowski - Direct

Q. Why not?

A. As we were about to begin, an agent from the Kansas City office told us to stop because headquarters had decided they were going to send someone out from headquarters to do that task.

Q. Who would do that task?

A. His name -- Supervisory Special Agent William Bodziak.

Q. Where did you go at that point?

A. We returned to the command post in Herington.

Q. What did you do when you returned to the command post in Herington?

A. We waited until a briefing was scheduled.

Q. What was the purpose of the briefing?

A. The briefing was to tell us that there was a search warrant and that my team would be conducting a search based on this warrant.

Q. Did you learn where the search was going to be?

A. Yes, I did.

Q. Where was the location?

A. It was 109 South 2nd Street in Herington.

Q. And you understood that to be Mr. Nichols' -- Mr. Terry Nichols' residence?

A. Yes, I did.

Q. Who conducted the briefing?

A. Basically the man in charge was the other assistant special

Mary Jasnowski - Direct

agent in charge, not the man that we met the night before, a Dale Watson.

Q. Who else conducted the briefing?

A. Well, at numerous times, different supervisors from the Kansas office would give input into what was going on; and we also had the chief division counsel -- my counterpart from the Denver division gave part of the briefing. He talked to us about the warrant.

Q. Who else was present for the briefing?

A. There were -- my entire team was present in addition to the people who came from headquarters, and there were also agents from the Kansas City division at this briefing.

Q. And how long did the briefing take?

A. Approximately an hour.

Q. Did you review any documents during the briefing?

A. Yes, we did.

Q. What did you review?

A. The search warrant and its attachment.

Q. And what information is reflected on the search warrant and the attachment?

A. The search warrant basically lays out the property to be searched, and the attachment basically lays out what it is we're permitted to seize.

Q. That is, you're permitted by the court-ordered search warrant?

Mary Jasnowski - Direct

A. That's correct.

Q. Did the other people who were going to participate in the search also review the search warrant and the attachment?

A. Yes, they did.

Q. What was your role going to be in the search?

A. My personal role -- they announced that my team would be doing the search and then I would be the team leader, so I was going to coordinate the search that night.

Q. Would you have responsibilities, then, to direct the other agents who would be assisting you in the search?

A. That's correct.

Q. About how many agents were going to assist you in executing the search warrant?

A. We had five people from Omaha in addition to myself, two of whom were not agents. And I asked for an additional -- some additional agents from the Kansas City division, and I received five additional Kansas City agents.

Q. So about how many people total were going to work on the search?

A. Approximately 15.

Q. What time did the briefing conclude?

A. Approximately 4 or slightly before 4.

Q. What did you do at that time?

A. Well, we coordinated and drove over to the -- Mr. Nichols' residence.

Mary Jasnowski - Direct

Q. And what did you see when you got there?

A. I saw -- we weren't able to drive directly up to it. The streets were blocked off. And I saw numerous FBI personnel and police personnel and Army personnel as well on the scene.

Q. Were you able to go immediately to the residence to begin the search?

A. No, we weren't.

Q. What was going on in the house before you began to execute the search warrant?

A. A protective sweep was being conducted.

Q. What did you do after that protective sweep was finished?

A. We set up -- we had already decided who was going to make the initial entries. And two members of the team, Mr. -- Supervisory Special Agent Burmeister and Ron Kelly went into the house to set up their equipment; and while they were doing that, myself, Sonya Hernandez, and Gene Grindstaff went around the exterior of the house and the property. And while they photographed, I made a sketch of the premises.

Q. Did you see what Agent Burmeister and Mr. Kelly were wearing when they went into the house?

A. Yes, I did.

Q. What were they wearing?

A. They were wearing protective coveralls and booties.

Q. And who were the next people to enter the house after Agent Burmeister and Mr. Kelly?

Mary Jasnowski - Direct

A. After them, they called us in: myself, Ms. Hernandez and Mr. Grindstaff.

Q. Before going into the house with Ms. Hernandez and Mr. Grindstaff, did you give them any instructions?

A. Yes, I did. I told them that we would be photographing the interior prefatory to doing the search, prefatory to beginning the search.

Q. Did you give them any instructions with respect to touching any of the objects inside the house?

A. Yes. I told them we would not begin searching until after we had finished the survey, so they were not to conduct any search.

Q. What were you wearing at that time?

A. I also was wearing protective coveralls and booties.

Q. And what were Mr. Grindstaff and Ms. Hernandez wearing?

A. They always donned protective coveralls and booties.

Q. Explain what you did with Ms. Hernandez and Mr. Grindstaff during this initial entry into the house.

A. Well, I basically shadowed them, because we didn't want to disturb the activity that Mr. -- or Special Agent Burmeister was conducting; so we stayed in the background -- but generally followed them around and would -- they would take photographs, and I would sketch each room of the house.

Q. And that's what you did?

A. Yes.

Mary Jasnowski - Direct

Q. About how long did it take you to sketch and photograph the interior of the house?

A. Approximately an hour, hour and a half.

Q. What I'd like you to do is find within that folder you have in front of you Government's Exhibit 2086.

A. Yes.

Q. Do you recognize that?

A. Yes, I do.

Q. What is that?

A. It's a computer-generated diagram based on the sketches that I made that night.

Q. And is it essentially a fair and accurate sketch of the exterior of the house, the property, and the interior rooms?

A. Yes, it is.

Q. Is it, in fact, drawn to scale?

A. No, it is not.

Q. But it's a fairly accurate representation of the structures?

A. Yes.

MR. MEARNS: Your Honor, we'd offer 2086.

MR. TIGAR: May I inquire, your Honor?

THE COURT: You may

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Good afternoon, Agent Jasnowski.

Mary Jasnowski - Voir Dire

A. Good afternoon.

Q. My name is Michael Tigar. I'm one of the lawyers appointed to help Terry Nichols.

A. Yes.

Q. This computer thing that you've described here: Is that a -- is it something that plays on a television? You say it's a computer-designed sketch. I don't understand what it is.

A. I don't exactly know how it was created myself. All I know is it wasn't drawn by hand.

Q. Okay. And when we see it, what will we see? Is it a computer -- is it like a cartoon simulation of us going through the house?

A. No. It's nothing quite so complicated, no.

Q. Okay. It just shows us what is -- what's in the different rooms?

A. I'm sorry. It's just a diagram.

Q. Oh, okay.

A. It's just a diagram.

Q. So it doesn't purport to show us what you found there?

A. There are some things that are noted, but generally no.

Q. Okay. And what sorts of things are noted?

A. Well, for instance, there is some barrels that are noted in the garage. But other than that -- and there are crates and -- shovels and crates and things like that that are noted basically as landmarks.

Mary Jasnowski - Voir Dire

Q. Oh, I see. Okay. So it just -- and later on you're going to tell us more about what we saw there and where you found it, and so on?

A. Yes.

Q. And it is based on what you saw?

A. Yes.

MR. TIGAR: Okay. Thank you very much for explaining it to me.

I don't have any objection to it, your Honor. I'm sorry.

THE COURT: All right. 2086 received.

DIRECT EXAMINATION CONTINUED

BY MR. MEARNS:

Q. If we can begin with the first page of 2086, please. Could you tell us what we see in that diagram, Agent Jasnowski.

A. Yes. This is the exterior looking down of 109 South 2nd Street basically in relation to the rest of the houses on the street.

Q. And so beginning on the far right side of the diagram, that is 2nd Street. Is that correct?

- A. Yes.
Q. And which direction is north?
A. North is at the top of the page.
Q. And could you just put a big circle around the residence?
A. I can. The residence is located here.

Mary Jasnowski - Direct

- Q. Now, if you would click that.
This is the driveway, then, located just to the south of the residence?
A. Yes.
Q. If you could clear the screen. If you click the pen . . .
There you go.
What is the structure, I guess, just to the left or to the west of the residence?
A. That's the garage.
Q. How many rooms are in that garage?
A. There is the main auto garage and there is a storage room.
Q. Where is the front door to the residence?
A. Front door to the residence is here off of the porch.
Q. Is there another door entrance to the house?
A. Yes. Off the driveway, there is a door.
Q. That is just kind of north and west of the driveway there?
A. Yes.
Q. And those little Xs represent windows on the residence?
A. Yes, they do.
Q. How many stories -- how many floors in this house?
A. There is there is a main floor, an attic, and a basement. Three floors.
Q. And is there any storage space down in that basement?
A. Yes, there is.
Q. Now, if we could turn to the second page, please.

Mary Jasnowski - Direct

- What do we see in that diagram?
A. This is a diagram of the first floor of the residence.
Q. Would you show us how you proceeded through the house when you entered for the first time on April 22?
A. Well, basically we came in here, into the storage room, went through the kitchen, into the living room, went over here, into the first bedroom, came back out, over here, into the second bedroom, through this door, into the laundry room, the bathroom, back into the kitchen, back into the storage room, and back into the laundry room. There was a door and steps leading down into a furnace basement.
Q. Okay. So if you could clear your pen and we could have the third page, please.
Which room in the basement were you referring to just a moment ago?
A. This is the room that we went to next.
Q. Okay. And then what was the next room you went to?

A. Then we went back up and then through the house again and down into the basement storage on the other side.

Q. Is there any way when you're in the basement to walk from that furnace room to the basement storage room?

A. No, there is not.

Q. And what's indicated there to the upper right? There is a large area referred to as a crawlspace. What's there?

A. Right. This is a crawlspace. It's not as deep as the

Mary Jasnowski - Direct

furnace room was, and these lines here -- they appear as if it's solid, but actually it's not. There is openings. If you're in the furnace room, you can see into this crawlspace area.

Q. Okay. Now, if you would clear your pen and we'll have the fourth page.

What is this a diagram of?

A. This is a diagram of the garage behind the house.

Q. Beginning with the room that's on the bottom on the south side, what is that room?

A. We called it the storage room. It's not an auto garage. It's a storage room.

Q. Where is the room you refer to as the auto garage?

A. This room. It's marked as J.

Q. That's the room just to the north there?

A. Yes.

Q. Were there any cars or trucks in that room when you entered that day?

A. No, there weren't.

Q. What was in that room?

A. Oh, there were a number of things in there. As you can see, we marked here crates and saws and -- crates and shovels, all sorts of hardwarish-type things.

Q. Okay. Did you take -- before you entered the house to draw this sketch, did you take photographs of the exterior of the

Mary Jasnowski - Direct

house?

A. Yes.

Q. What I'd like to do now is if you'd look in the folder for Government's Exhibit 1778.

THE COURT: Well, we'll break in and recess at this point for the day.

So be back at 8:45 in the morning to resume your testimony.

Members -- excuse me. Members of the jury, we'll, as usual, recess at this time -- you can step down.

THE WITNESS: Thank you.

THE COURT: And we'll resume at 8:45 in the morning.

And, of course, it's again my obligation to remind

you

of your obligation to be careful about all of the things that you may read, see, and hear in the meantime, to avoid anything

you may read, see, and hear in the meantime, to avoid anything which could in any way relate to the issues on trial in this case and also, of course, to maintain open minds and avoid discussion about the trial with all of other persons, including other jurors.

We'll resume at 8:45 in the morning. You're excused now.

(Jury out at 5:00 p.m.)

THE COURT: We'll expect just to take one recess tomorrow, I would hope in the middle of the four hours, or whatever we've got to work with.

Okay. Recess.

(Recess at 5:01 p.m.)

* * * * *

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Item

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WITNESSES

Tejal Bhakta

Direct Examination by Mr. Mearns

Cross-examination by Mr. Woods

Helen Mitchell

Direct Examination by Mr. Ryan

Cross-examination by Mr. Woods

Redirect Examination by Mr. Ryan

Sharri Furman

Direct Examination by Mr. Mearns

Cross-examination by Mr. Woods

Frederick Schlender

Direct Examination by Mr. Mearns

Cross-examination by Mr. Woods

Redirect Examination by Mr. Mearns

Recross-examination by Mr. Woods

Redirect Examination by Mr. Mearns

Jerry Showalter

Direct Examination by Mr. Mearns

Cross-examination by Mr. Woods

(Jerry Showalter)

Redirect Examination by Mr. Mearns

Mary Jasnowski

Direct Examination by Mr. Mearns

Voir Dire Examination by Mr. Tigar

Direct Examination Continued by Mr. Mearns 7457

PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
64-68	7366	7366			
86	7303	7303			
88	7317	7317			
90	7321	7321			
91	7320	7320			
92	7314	7314			
93	7322	7322			
94	7323	7323			
96	7323	7324			
97	7312	7312			
100-105	7331	7331			
105-106	7333	7333			

107-107A	7341	7341
108	7341	7341
109-109A	7341	7341
110	7353	7353
111-111A	7341	7341

PLAINTIFF'S EXHIBITS (continued)

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
112	7341	7341			
113	7351	7351			
114	7342	7342			
226	7306	7306			
1951	7313	7313			
2086	7455	7457			

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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 6th day of November, 1997.

Paul Zuckerman

Kara Spitler

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