

Criminal Action No. 96-CR-68
UNITED STATES OF AMERICA,
Plaintiff,

TERRY LYNN NICHOLS,
Defendant.

(Trial to Jury: Volume 77)

Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 8:46 a.m., on the 17th day of November,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

APPEARANCES

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

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(In open court at 8:46 a.m.)

Good morning.

ALL: Good morning.

THE COURT: Are we ready to resume with Agent West?

MR. MACKEY: Yes.

THE COURT: Okay.

(Jury in at 8:47 a.m.)

THE COURT: Members of the jury, good morning.

JURY: Good morning.

THE COURT: You will recall when we recessed Friday afternoon, we were hearing testimony from FBI Agent William West concerning a search of Mr. Nichols' residence. We'll continue with his testimony now.

If you'll resume the stand, please, Agent West.

MR. WOODS: Thank you, your Honor.

(William West was recalled to the stand.)

BY MR. WOODS:

Q. Good morning, Agent West.
A. Good morning.
Q. My name is Ron Woods. We've never met; is that correct?
A. That's correct.
Q. I'm one of the lawyers that was appointed by the district court in Oklahoma City to help Terry Nichols in this case. You've testified earlier in the case on finding some pamphlets and items in the storage room, and you were questioned by Mr. Tigar; is that correct?
A. That's correct.
Q. When we broke Friday, you had testified about finding some weapons in the storage area and also in the garage; is that correct?
A. That's also correct.
Q. Okay. Now, you're based in Kansas City, or you were at that time, in April '95?
A. Yes, sir.
Q. Are you still there?
A. Yes, sir.
Q. When did you go to the Herington area?

A. On --

William West - Cross

MS. WILKINSON: Objection, your Honor. I believe this is outside the scope of the direct.

THE COURT: Well --

MR. WOODS: He's taking part in a search; we're going to get to the basics of the search.

THE COURT: The objection is overruled.

THE WITNESS: I first got to the Herington area on the 21st of April.

BY MR. WOODS:

Q. That's Friday?

A. That's correct.

Q. Were you part of the S.W.A.T. team or the S.O.G. team?

MS. WILKINSON: Objection, your Honor.

THE COURT: The objection is overruled.

THE WITNESS: I'm part of the S.O.G. team.

BY MR. WOODS:

Q. For the jury, would you tell them what that is.

A. That's a team that conducts primarily surveillances.

Q. Were you the pilot?

A. I am a pilot, but I was not acting as a pilot then.

Q. There was a plane that went from Kansas City to Herington, wasn't there?

A. That's correct.

Q. And what part did you play on Friday, the -- April the 21st, prior to taking part in the search the next day on the

William West - Cross

22d?

A. What part did I play? I mean I was part of the

surveillance.

Q. What did you do on Friday, the 21st?

A. We drove to the Herington area, and I participated in what we were going to conduct as surveillance.

Q. And did you notice Terry Nichols go to the Herington police station, the Department of Public Safety, it's called?

A. Yes, I did.

Q. So you were aware that the Mr. Nichols was interviewed by the FBI on Friday, the 21st?

A. Yes, I am.

Q. Now, on Saturday, the 22d, you took part in a search of his house?

A. That's correct.

Q. What time did you start your activities relating to the search such as a briefing or whatever you did prior to executing the search?

A. There was a briefing in the afternoon of the 22d.

Q. What did you do that morning, the -- Saturday, the 22d?

A. That morning I helped participate in just crowd control and keeping people away from the residence.

Q. There on 2nd Street?

A. That's correct.

Q. Now, what time did the briefing start?

William West - Cross

A. I'm not sure. It was -- I just recall it was in the afternoon sometime.

Q. Where was the briefing held?

A. At the -- what I call the police station, the department of safety.

Q. Okay. And who held the briefing, who was in charge?

A. I'm not sure who was in charge. I know an official, a legal adviser gave the briefing, a lawyer. And I'm not sure what office he was from.

Q. Okay. You had mentioned earlier that you thought the legal adviser from Denver was there, but I'm sure that was just an oversight; is that correct?

A. That's correct. I'm not sure if he was from Denver. But it was from -- I'm not sure where he was from.

Q. Okay. And did you read the warrant?

A. Yes, I did.

Q. And on the front of the warrant, it shows that Scott Crabtree was the affiant; is that correct?

A. That's correct.

Q. Would you tell the jury what the affiant is.

A. He just swears to the facts alleged in the warrant, that they're true and correct.

Q. Okay. Now, was Scott Crabtree present there in the briefing?

A. I'm not sure.

William West - Cross

Q. You know who Scott Crabtree is, don't you?

A. Yes, I do.
Q. He's part of the Kansas City division, isn't he?
A. That's correct.
Q. And he's in Salina, Kansas?
A. That's correct.
Q. And that's a resident agency out of Kansas City?
A. That's correct.
Q. But you don't recall whether or not he was there?
A. No. A lot of people attended the meeting, and I'm not sure who all they were.
Q. Well, did anybody at the meeting tell you what Terry Nichols had told them that day on Friday, April 21?
A. I don't recall that. I just recall reading the warrant and discussing the types of things we were looking for and, you know, to -- things of that nature.
Q. All right. Do you recall who interviewed Mr. Nichols? Do you know who did that?
A. I know who did it, but I don't, you know -- I didn't participate.
Q. I know you didn't participate. You know Agent Steve Smith, didn't you?
A. Yes.
Q. You know Agent John Foley?
A. Yes.

William West - Cross

Q. And you know Agent Jablonski?
A. Yes.
Q. And Scott Crabtree?
A. That's correct.
Q. And those four interviewed Terry Nichols; is that correct?
A. I understand that's correct. Yes.
Q. Now, before you went into the house, did anybody show you the map, the diagram of the house and the diagram of the location of the weapons and ammunition that Mr. Nichols had drawn for the agents?
A. No, sir.
Q. Had you seen that exhibit that day?
A. I saw that exhibit this last week.
Q. Okay. And by the way, did you mark on Exhibit No. 2086 where you found the weapons?
A. Yes, sir.
Q. Okay. And have you compared those two? By "those two," I mean the exhibit that Mr. Nichols marked and the exhibit where the weapons and ammunition was.
A. No, sir.
Q. Well, but you have looked at it?
A. Have looked at what, sir?
Q. The exhibit where Mr. Nichols drew where his weapons and ammunition was.
A. Yes, I looked at that last week.

William West - Cross

Q. Was it inaccurate?

A. It looked fairly accurate, sir.

Q. All right. And speaking of the ammunition that you showed the jury last week, it was in cellophane bags or these little Ziploc small bags; is that correct?

A. That's correct.

Q. And you've told the jury you've been to gun shows?

A. I've been to one or two gun shows, yes.

Q. You've seen ammunition sold at gun shows in those small Ziploc bags, have you not?

A. I can't say that I have. But it would be realistic that they would be sold, but I can't say that I saw any.

Q. All right. Thank you. Thank you.

All right. So you're at a briefing, and I assume you divide up into teams; is that correct?

A. Before we went into the house, that's correct.

Q. What time did you enter the house?

A. Approximately 8:00 p.m.

Q. Do you know what time the search of the house actually began?

A. No, I don't. We all -- the teams went in about 8:00. I'm not sure when team -- people before us went in, no.

Q. Your team went in at 8:00; is that correct?

A. Approximately, yes, sir.

Q. Are you aware that teams went in at 4:00?

William West - Cross

A. I know that -- I'm not aware of the time.

Q. And you're aware that the time the warrant was obtained -- at 11:20 that morning, on the 22d?

A. I didn't know that. I knew we obtained a warrant prior to going in the house. I wasn't aware of the time.

Q. And the warrant that you looked at and read, did it have the judge's signature and the time that he signed it there?

A. I can't recall.

Q. Okay. Now, who was on your team?

A. Bob Meridith and Cullen Scott.

Q. The three of you were a team; is that correct?

A. That's correct.

Q. And would you tell the jury just briefly what -- why you divide into a team and what your duties are when you're a small team like that and you're searching a room.

A. We just go to a team to ensure that every place in the house is covered; and we -- since we know what we're looking for -- in this case we seized several weapons -- we could process them or look at -- do it more efficiently with more than one person.

Q. One person keeps the evidence recovery log, I assume; is that correct?

A. That's correct.

Q. And one person seizes the item and puts a tag on it or initials it; is that correct?

William West - Cross

A. Yes, sir.

Q. Okay. And the other's assisting the seizure?

A. That's correct.

Q. And would you explain briefly to the jury how you did that with the weapons in the storage area. You mentioned that there are three main areas where weapons were found. Let's start with the storage area.

A. Okay. Concerning the weapons?

Q. Yes, sir. Just briefly for the jury how a team of three would operate, how you seized the weapon, labeled it, and how the other agent kept the evidence recovery log.

A. Well, I've got to say that for the weapons, we also had a photographer to take pictures.

Q. Right.

A. We would take, say, a weapon in a corner, say from the blanket area. The weapons that were enclosed in a blanket. One agent would take the weapon. We all had gloves on so we wouldn't disturb any prints or that type of evidence. One agent would pick it up, clear it, make sure that no rounds were in the chamber. We would -- he might read off what -- from the gun the serial number or descriptive data so we could fill out -- another agent -- in this case myself, I filled out an evidence tag. The tag was then placed near the gun, photograph was taken.

Q. Were both sides of the weapon photographed, like a hand,

William West - Cross

photograph one side and then the other side so that both sides of the stock are showing?

A. No. Just -- as I recall, we just took one photograph at that time of the weapon.

Q. All right.

A. With the card, with the evidence tag with the weapon. We recorded it on a log. Then the agents would initial the evidence tag and the weapon was then taken to a -- to Lou Hupp, a fingerprint examiner.

Q. Did he conduct the fingerprint examinations there on the premises that you observed?

A. No. He did not conduct fingerprint examinations.

Q. Okay. But they were just turned over to his custody?

A. They were turned over to his custody; that's correct.

Q. Okay. Now, you mentioned that you would put the serial number down on the evidence tag; is that correct?

A. That's correct.

Q. And is it true that each weapon has a different serial number?

A. Yes, sir.

Q. And that's put on there by the manufacturer?

A. Yes, sir.

Q. And would you tell the jury what the purpose of that is, why each gun has a separate serial number.

A. Well, it's just to identify that particular weapon.

William West - Cross

Q. All right. And are you aware -- wasn't there an ATF agent with you also, Tony DeNardi?

A. Yes, sir.

Q. Are you aware that ATF keeps records of transfers from the manufacturer to the seller when they distribute the weapons out of the manufacturer?

A. I knew they kept weapons and he was the expert concerning that; so, no, I don't know exactly how it's done.

Q. You've seen an ATF form before, haven't you, that shows the tracking of a weapon from the manufacturer to a retail dealer to a seller?

A. I've seen reports in a file, but I don't know that I've seen the actual document.

Q. Well, you know what ATF jurisdiction is, don't you?

A. Primarily, yes.

Q. They're responsible for firearms registration, aren't they?

A. That's correct.

Q. So serial number is written down on the evidence tag; is that correct?

A. That's correct.

Q. Now, you write down a case number, don't you?

A. Yes, sir.

Q. Okay. And the case number comes out of the office of origin; is that correct?

A. That's correct.

William West - Cross

Q. And would you explain to the jury what an office of origin is.

A. That's just the office that is primarily responsible for the case, to make sure it's continued to its logical conclusion.

Q. All right. What office was the office of origin on this case?

A. Oklahoma City.

Q. Okay. And why is a case number assigned to an investigation?

A. Just so the records will -- concerning that particular case will reach the proper file.

Q. Each investigation has a separate case number; is that correct?

A. That's correct.

Q. So that in a large investigation that takes place all over the nation, the same case number is assigned to every lead; if somebody makes an interview, there's a case number assigned to that, and it goes back to Oklahoma City; is that correct?

A. That's correct.

Q. And it goes into one central file so that the agents can keep up with what's going on in one file; is that correct?

A. That's correct.

Q. And it's very important that this -- the case number be correctly recorded on the interviews and on the evidence; is

William West - Cross

that correct?

A. Yes, sir, so it will get in the proper file.

Q. Right. Now, isn't it true that every single piece of evidence that was taken out of Mr. Nichols' home was misidentified by the case number?

A. I don't know that to be true.

Q. You know that all those weapons are misidentified, don't you?

A. No, I don't.

Q. What's the case number on this case?

A. 174A-OC-56120.

Q. Okay.

Q. Read the case number that you put on this weapon.

A. 174A-KC-52160.

Q. It's not the same, is it?

A. No.

Q. In fact, every one of these weapons are mislabeled with the case number, aren't they?

A. You mean because of the Kansas City office?

Q. No, sir, because of the number put on these tags.

A. I guess so.

Q. You want to look at each one of these tags?

A. I will take your word for it.

Q. Whatever this is, it was removed from the house, every single item that was removed from the house has the wrong case

William West - Cross

number on it, doesn't it?

A. I don't know that to be true.

Q. You read the 302's on this case, haven't you?

A. Yes, I've read some.

Q. All right. Let's start with the first location. You mentioned that the first location was in a corner, sort of wrapped in blankets -- is that correct -- in the storage area?

A. That's correct.

Q. And you testified that there were seven rifles found in that area that were wrapped up in blankets?

A. That's correct.

Q. And through the prosecutor, you introduced four of the seven.

A. That's correct.

Q. That are in this group of 18 here.

A. That's correct.

Q. Okay. The other three are where?

A. The other three are maintained with the evidence. Back at, I guess, the Oklahoma command post, Oklahoma City command post.

Q. In some file; right?

A. In this file.

Q. If they've corrected the file number.

Is that correct?

A. Under the proper file number, yes.

Q. Okay. Now, the second area you testified about was the

William West - Cross

closet area, that there were nine weapons found in the closet area?

A. That's correct.

Q. Okay. And through the prosecutor, you introduced five of those, and those five are in this platform over here; is that correct?

A. That's correct.

Q. Okay. Now, when you made out your evidence tag, did you write on that evidence tag whether or not the weapons had a price sticker on them?

A. No, I didn't.

Q. Okay. And you didn't photograph both sides of the stock?

A. No, I didn't.

Q. All right. So we've got five of the nine. Where are the other four?

A. They're with the other evidence.

Q. And do you know where that is?

A. Yes, Denver. I said Oklahoma City. I will correct myself, Denver command post.

Q. All right. In fact, you've seen them there, haven't you?

A. Yes.

Q. And they've been handled a number of times, haven't they?

A. Of course.

Q. All right. Then the third area that you found weapons were over the bathroom, in the garage area, sort of the eaves area

William West - Cross

above the -- between the roof and the -- wherever the roof of the bath is?

A. That's correct.

Q. And you found nine?

A. That's correct.

Q. And you brought all nine of those in; is that correct?

A. That's correct.

Q. Okay. And they're there on that platform?

A. Yes, sir.

Q. Okay. And you found some ammunition, which we've discussed was in little plastic Ziploc Baggies?

A. Yes, sir.

Q. You recall the total number of weapons that were found in the house?

A. Of the rooms that I searched, which was just the storage room and the garage area, there were 29.

Q. Okay.

THE COURT: I take it we're talking about firearms?

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

BY MR. WOODS:

Q. Now, in that storage area, you also have already testified about finding this Quaker State box that had some pamphlets in it?

A. Yes, sir.

Q. Certainly wasn't up in his living room on a dining room

William West - Cross

table or anything; is that correct?

A. That's correct.

Q. Now, in the storage area, didn't you find an answering machine for a telephone?

A. I believe an answering machine was found in one of the boxes, yes, sir.

Q. And you took the tape out of it?

A. I can't remember that, sir.

Q. Okay. Do you -- do you have the recovery log in front of you, evidence recovery log?

A. No, I don't.

Q. Do you recall whether or not the tape was logged in as an item seized?

A. I don't remember a tape, but I can't tell you, sir.

Q. Okay. Okay. But your team of three was searching that storage area; is that correct?

A. Yes, sir.

Q. Okay. You noticed that there was no Caller ID on the telephones in Mr. Nichols' house, didn't you?

A. I didn't notice that, sir.

Q. Did you look at the phone?

A. No, sir.

Q. Did you confine your activities solely to the storage area, went in that room and went out of it and didn't look in any other part of the house?

William West - Cross

A. Except for the garage, yes, sir.

Q. Just those two areas: The garage and the storage room?

A. Yes, sir.

Q. Okay. Did you ever hear that Mr. Nichols had Caller ID on his phone from the other agents that were making the search there in his presence?

MS. WILKINSON: Objection, your Honor, to what he heard.

THE COURT: Sustained.

MR. WOODS: Okay.

BY MR. WOODS:

Q. You said that you brought with you today the exhibit -- the diagram of the house where you've marked where the locations were; is that correct?

A. Yes, sir. Of the three areas where we found the long guns.

Q. Yes. All right.

MR. WOODS: Your Honor, may I have that exhibit so that we can offer that into evidence?

THE COURT: Yes.

You have it here?

THE WITNESS: Yes, sir.

MR. WOODS: May I approach, your Honor?

THE COURT: Yes.

MR. WOODS: Thank you, sir.

THE WITNESS: Did you want the other two pages?

William West - Cross

BY MR. WOODS:

Q. Would you just mention for the record how you diagramed where the weapons were; what kind of markings did you put on there?

A. I put a blue X on the three areas where -- three primary areas where the long weapons, rifles and shotguns, were located.

Q. All right. Thank you.

MR. WOODS: Your Honor, may it please the Court, I'll have these marked and then offer them into evidence after the break.

THE COURT: All right.

MR. WOODS: And right now, I have no further questions. Thank you.

THE COURT: Well, maybe we ought to mark it now so we know what it is on the record at least.

MR. WOODS: Yes, your Honor. I mean, if I can get my last exhibit number and I will make it subsequent to that.

THE COURT: All right.

MS. WILKINSON: Your Honor, may I just take a look at that?

THE COURT: Sure.

MS. WILKINSON: Thank you.

We have no objection to the introduction of 1646, your Honor.

William West - Cross

THE COURT: Do we have the identification?

MR. WOODS: For the record, your Honor, it will be D1646, and it is a two-page exhibit which is also Government's Exhibit 2086.

MS. WILKINSON: It has three Xs that Mr. West put on to show where he recovered the guns that he has identified.

THE COURT: Well, I'm confused. Is this a duplication?

MR. WOODS: Your Honor, it's Government's Exhibit 2086, which is a diagram of the house that the Government had done; and it's got a couple of blue Xs that Agent West placed on it to show the placement of the weapons and where he found them.

THE COURT: So that's the difference between the two documents?

MR. WOODS: Yes, your Honor.

THE COURT: All right. Understood now.

So it's received now.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Agent West, Mr. Woods asked you about the file number that was used as part of the marking system on these firearms. Is

that an internal system that you use at the FBI?

A. Yes, ma'am.

Q. Do you have any doubt in your mind that the firearms you

William West - Redirect

identified for the jury are the firearms that you found in Mr. Nichols' house?

A. No, ma'am.

Q. You also were asked about an answering machine. Was that answering machine hooked up to Mr. Nichols' phone or was it in a cardboard box?

A. This was in a cardboard box with a lot of other items.

Q. And finally, you were asked about your participation in this investigation on the day before the search -- that's Friday, April 21. You were in Herington that day; is that right?

A. That's correct.

Q. And you were conducting surveillance?

A. That's correct.

Q. Where were you in Herington this afternoon when you were conducting surveillance?

A. You mean on the streets?

Q. Yes. How far were you from Mr. Nichols' house?

A. Approximately -- it would just be an estimate -- six or seven blocks.

Q. Did you see him in his car leaving his house that afternoon?

A. Yes, I did.

Q. Did he go straight to the police department?

A. No, he didn't.

William West - Redirect

Q. Where did he go?

A. He went to a Surplus City store parking lot, and went into that parking lot for a few minutes.

Q. Did he go into the store?

A. No, he didn't.

Q. Did he get back into his car?

A. Yes, he did.

Q. What did you do after that?

A. After that, he turned around and then went to the police department.

Q. And on his way back to the police department, did he pass his street that his house is on?

A. Yes, ma'am.

Q. Will you explain to the jury, then, generally the route that he took. If he went to the surplus store before he went to the police department, was he backtracking before he went back to the police department?

A. You mean was he --

Q. In other words --

A. -- when he went to the Surplus City?

Q. Was that on the way if you were driving a direct route?

A. No, ma'am, it would not be on the way to the police department. So he went to the Surplus City area first, then turned around, went back by the route he would take to go to his house and then went on to the police station.

MS. WILKINSON: No other questions, your Honor.

MR. WOODS: No further questions, your Honor.

THE COURT: All right. Is he -- is Agent West going to be back?

MS. WILKINSON: For his sake, I hope not, your Honor. We'll dismiss him. We do want to clarify the record on some of the firearms. I'm not sure I offered each one, and if I could just for the record make that clear.

MR. WOODS: It was a little unclear when I read the transcript.

MS. WILKINSON: Your Honor, one I don't think I offered was Government's Exhibit 1800, and we would offer that at this time.

THE COURT: There's no objection, I take it.

MR. WOODS: I would like to know what 1800 is, what particular weapon.

THE COURT: Okay.

MS. WILKINSON: Your Honor, I don't have them in numerical order. Perhaps I can do this --

MR. WOODS: If you can describe into the record what it is as to the make and caliber, serial number.

MS. WILKINSON: Sure, you bet. Government's Exhibit 1800 is the gas gun with the rather large barrel.

Do you have any objection?

MR. WOODS: As long as it's identified for the record.

THE COURT: All right. I don't believe we had serial numbers coming in.

MS. WILKINSON: No, we didn't. Well, Agent West would just say there was a serial number on there, but we did mark as Government's Exhibit 1800, and he gave a description as Lake Erie Chemical Company 37 millimeter gas gun.

MR. WOODS: That's accurate enough.

THE COURT: It's received.

MS. WILKINSON: The other one, your Honor, is Government's Exhibit 1833, which we introduced as a E.A. Company, Model J-15, .223 caliber with a serial number and a Tasco scope. And when I offered it, I gave the wrong number, so I would like to move it in as 1833 and not as 1793 which is I think what I said for the record.

MR. WOODS: No objection.

THE COURT: 1833 is received, then, in substitution for the previously announced number.

MS. WILKINSON: And Agent West can be dismissed.

THE COURT: Agreed?

MR. WOODS: Yes, your Honor.

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

Next witness, please.

MR. MACKEY: Yes, your Honor. We would call FBI Agent William Nellis.

THE COURT: All right.

(G. William Nellis 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: G. William Nellis, N-E-L-L-I-S.

THE COURTROOM DEPUTY: Thank you.

MR. ORENSTEIN: May I proceed, your Honor?

THE COURT: Oh, yes, please.

MR. ORENSTEIN: Thank you, sir.

DIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. Mr. Nellis, good morning.

A. Good morning.

Q. Would you tell the jury where you work, sir.

A. I'm a special agent of the FBI.

Q. Where are you stationed?

A. Omaha division.

Q. How long have you been with the FBI?

A. 13 years.

Q. Where have you been stationed during all those 13 years?

A. For one-and-a-half years at the Washington headquarters, two years at the Washington field office, and nine-and-a-half years in the Omaha division.

Q. What is your educational background?

A. I have a bachelor of science in criminal justice from the

G. William Nellis - Direct

University of Scranton, in Scranton, Pennsylvania.

Q. Let me direct your attention now to April 22, 1995. Did you and colleagues of yours from the FBI execute a search warrant at the home of Terry Nichols in the Herington, Kansas?

A. Yes, sir.

Q. And did you personally recover some items during that search?

A. Yes.

MR. ORENSTEIN: Your Honor, may I approach? There's a bulky item I'd like to --

THE COURT: All right.

BY MR. ORENSTEIN:

Q. Agent Nellis, I've handed you an exhibit that's been marked for identification as Government Exhibit 1808 -- I'm sorry, 1809, and inside of it is 1808. Do you recognize those exhibits?

A. Yes, I do.

Q. Let's start with the case that you've got in front of you. Can you identify what that is, please.

A. This is a Army rifle case.

Q. And does it bear a tag that you filled out during the search?

A. Yes, it does.

Q. And did you initial that tag?

A. Yes, I did.

G. William Nellis - Direct

Q. Now, when you found that item during the search, where was it?

A. It was on a shelf under the steps in the basement of Mr. Nichols' house.

Q. And was there anything inside of it, when you found it?

A. Yes.

Q. Is that Government Exhibit 1808?

A. Yes, sir.

Q. Take a look inside and open it up.

Is that an item that you found inside the case during the search?

A. Yes, sir.

Q. What is that, for the record, please.

A. It's as Uzi sub-machine gun.

Q. Is that a real Uzi or a replica?

A. It's a replica.

Q. When you found it, at the time did you know it was a replica?

A. No, sir.

MR. ORENSTEIN: Your Honor, the Government offers 1808 and 1809.

MR. WOODS: Subject to our prior discussions, no objection.

THE COURT: All right. They're received.

BY MR. ORENSTEIN:

G. William Nellis - Direct

Q. Now that they're in evidence, would you hold up the item and show the jury.

And at the time, you thought that was a real gun, did you not?

A. Yes, sir.

Q. And it has markings like a real gun?

A. Yes, it does.

Q. In addition to recovering those items, did you recover items in the storage area in the south side of the garage?

A. Yes, sir.

Q. If you would reach into your folder and look for Government Exhibit 1709. Do you have that there?

A. Yes, I do.

Q. And is that one of the items that you found during the search?

A. Yes, sir.

Q. For the record, please, what is it?

A. It's a video cassette, Scotts' video cassette titled "Mike Tyson" and "Waco, The Big Lie."

Q. And where did you find it?

A. In a milk crate in that storage area of the garage.

MR. ORENSTEIN: Government offers 1709, your Honor.

MR. WOODS: No objection.

THE COURT: 1709 received.

BY MR. ORENSTEIN:

G. William Nellis - Direct

Q. Agent Nellis, would you hold up the video and show the jury

where you saw that title.

A. On the spine of the tape.

Q. Would you read what it says, again, please.

A. "Waco, The Big Lie," and "Mike Tyson."

MR. ORENSTEIN: Your Honor, there's a stipulation that

I'd like to have published to the jury at this point that the handwriting on that label, on the video cassette, was written by Mr. McVeigh.

MR. WOODS: That's our stipulation.

THE COURT: All right. Then it's agreed that the handwriting is that of Mr. McVeigh.

MR. ORENSTEIN: With that, your Honor, I have no further questions on direct. Thank you.

THE COURT: All right. Mr. Woods.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good morning, Mr. Nellis.

A. Good morning.

Q. My name is Ron Woods. I'm one of the lawyers that was appointed to represent Terry Nichols. You and I have never met; is that correct?

A. No, sir.

Q. You told the jury that you graduated from the University of Scranton; and where was that, again?

G. William Nellis - Cross

A. Pennsylvania.

Q. And you have a degree in criminal justice?

A. Yes, sir.

Q. Went directly into the FBI?

A. After approximately a year I did.

Q. All right. And you did their 14-week training program?

A. 13 weeks.

Q. Oh, it's 13 weeks now?

A. It was when I went through.

Q. Okay. And how much of that 13 -- how many of those weeks are devoted to firearms training?

A. Approximately eight weeks' intensive firearms training.

Q. Okay. So it's over 50 percent of the time?

A. Yes, sir.

Q. Okay. Then you get your gun and badge and you're a real agent and you go out and make arrests; is that correct?

A. Yes, sir.

Q. How long did it take you to discover that that's a replica?

A. I never discovered it was a replica. I was told.

Q. Okay. Now, the video cassette, have you looked at it?

A. At the cassette?

Q. Yes. Had you seen the contents? Have you placed it on a VCR and watched "Mike Tyson" in a fight and also the cassette about Waco?

A. No, I didn't.

MR. WOODS: No further questions, your Honor.

MR. ORENSTEIN: Nothing further. The witness is excused.

THE COURT: Agree to excuse the witness, Mr. Woods?

MR. WOODS: Yes, your Honor.

THE COURT: You're excused.

Next, please.

MR. MACKEY: Yes, your Honor. FBI Agent Cullen Scott.

THE COURT: Come in, please.

THE COURTROOM DEPUTY: Raise your right hand.

(Cullen Scott affirmed.)

THE COURTROOM DEPUTY: Have a seat, please.

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

THE WITNESS: Cullen Scott, S-C-O-T-T.

THE COURT: Miss Wilkinson.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Agent Scott. Tell the jury where you work.

A. I work for the Federal Bureau of Investigation in the Kansas City field office.

Q. Are you an agent?

A. Yes.

Q. How long have you been an agent?

A. Over 28 years.

Cullen Scott - Direct

Q. I take it you were in Kansas City in April of 1995?

A. I was.

Q. Were you assigned to work on the Oklahoma City bombing investigation?

A. Yes, I did (sic).

Q. Did you participate in the search of Mr. Nichols' house?

A. I did.

Q. Were you there on April 22 and into the morning of the 23d?

A. Yes, ma'am.

Q. And did you seize several items in Mr. Nichols' house?

A. Yes, I did.

Q. Can you look in your folder at Government Exhibit 1708.

A. Okay.

Q. Did you seize that tape, that videotape?

A. Yes. There are videotapes here, both of which I seized.

Q. Is the other marked 1710?

A. 1708 and 1710.

Q. Did you seize both of those tapes from the same area of Mr. Nichols' house?

A. Yes, ma'am.

Q. Where did you find them?

A. They were in what we called the storage room, which is a room located in the southwest corner of the house. They were located physically in a black plastic storage bin of some type.

Q. Is this storage room you're referring to the room right

Cullen Scott - Direct

next to the kitchen in the Nichols house?

A. Yes, ma'am.

Q. Did you take those two tapes into custody?

A. I did.

Q. What did you do with them when you took them?

A. I logged them or they were logged in on our evidence log, and they were initialed by an agent, and I placed them in an exhibit envelope.

Q. Did you mark that exhibit envelope?

A. I did. My initials -- this is the envelope. And my initials appear on the evidence tape which sealed the envelope.

MS. WILKINSON: Your Honor, we would offer Government's Exhibit 1708 and 1710.

MR. WOODS: May I see the tapes, to see what they are, your Honor?

THE COURT: Surely, you may.

MR. WOODS: Thank you.

Thank you.

THE WITNESS: Uh-huh.

MR. WOODS: No objection, your Honor.

THE COURT: 1708, 1710 received.

BY MS. WILKINSON:

Q. Mr. Scott, tell the jury how 1708 is marked.

A. The title of the tape?

Q. Yes, please.

Cullen Scott - Direct

A. Yes. It's labeled, "Waco: The Big Lie."

Q. How is 1710 marked?

A. Exactly the same.

Q. Are there any price tags or any small tags with a number on those items?

A. Yes. Each of these tapes have an orange sticker with the figure 5 on the sticker.

MS. WILKINSON: Your Honor, at this time we would like to announce a stipulation, that that handwriting is Mr. Nichols' handwriting on those tapes.

MR. WOODS: We stipulated to that, your Honor.

THE COURT: All right. Then the handwriting on these two exhibits is that of Mr. Nichols.

BY MS. WILKINSON:

Q. Mr. Scott, in front of you is also an ammunition box, Government's Exhibit 1866. Do you recognize that?

A. Yes, I do.

Q. Could you open up and see if you recognize the contents in the ammunition box.

A. I do.

Q. Are they marked 1866A and 1866B?

A. Yes, ma'am.

Q. Did you seize those from Mr. Nichols' house?

A. Yes, from the garage at the Nichols residence.

Q. And were the two items that you've just taken out of the

Cullen Scott - Direct

box in the ammunition box when you found them?

A. Yes, they were.

MS. WILKINSON: Your Honor, we'd offer 1866, 1866A, and 1866B.

MR. WOODS: If I may just take a look at those --

THE COURT: Certainly.

MR. WOODS: -- contents, your Honor?

No objection, your Honor.

THE COURT: 1866, 1866A and 1866B received.

BY MS. WILKINSON:

Q. Mr. Scott, tell the jury how 1866A and B are marked. What are they?

A. These are -- they're marked, "Platoon Early-Warning System." Each of them are marked exactly the same way. They're early-warning devices.

Q. And you found those two, yourself; is that right?

A. Yes, I did.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Mr. Woods.

MR. WOODS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good morning, Agent Scott. My name is Ron Woods. I'm one of the lawyers appointed to represent Terry Nichols in this case.

Cullen Scott - Cross

A. Good morning.

Q. You and I have never met; is that correct?

A. I'm sorry?

Q. You and I have never met; is that correct?

A. That's correct.

Q. You seized the items in the storage area?

A. These two VCR cassettes I seized in the storage area of the house.

Q. All right. Did you put your initials and the case number on the VCRs?

A. No, sir. The initials on the VCR is the initials of another agent who has since retired, Robert H. Meridith.

Q. Okay. You were present, though, when he seized them?

A. Yes, I was.

Q. Is that your testimony?

A. Yes.

Q. Is there a case number placed on the exhibit?

A. No, sir, I don't believe so. There's the -- his initials and then the date and then the exhibit number.

Q. So nobody put a case number on the thing?

A. No.

Q. Okay. Now, the sticker on there is a price sticker, isn't it?

A. That's what it appears to be.

Q. You said it says "5." Doesn't it say "5" with a dash like

Cullen Scott - Cross

\$5?

A. It says "5" with a dash.

Q. Have you been to any gun shows?

A. Oh, maybe one or two in my -- in my life, in my adult life.

Q. Can you tell the jury what you've seen sold at the gun shows that you've been to.

A. Guns, ammunition is all I can think of. I'm not --

Q. Have you ever seen videos sold at gun shows?

A. No, I haven't.

Q. You ever seen any Army surplus?

A. Yes, I have.

Q. You ever seen any old Army uniforms sold?

A. Yes.

Q. Printed material?

A. Not that I can recall.

Q. Okay. Now, where did you seize the ammunition can?

A. This was in the garage --

Q. Okay.

A. -- behind the Nichols residence.

Q. Now, did you personally seize that one?

A. Yes, sir, I did.

Q. Did you put a case number on it?

A. No, I don't believe I did. I just --

Q. On the lid, there's a lot of markings?

A. Oh, I'm sorry. Yes, sir, there is, I did put a case number

Cullen Scott - Cross

on it.

Q. What case number did you put on there?

A. The FBI case number is 174A-KC-52160. That was subsequently changed to another case number, I believe.

Q. You have a KC number rather than a OC number on there?

A. This is a KC number. It was early on in the investigation, and it was subsequently changed to and it was OC number. This was the original.

If I may look under this evidence piece of tape.

THE COURT: Yes.

THE WITNESS: No, that's the only -- that's the only case number on here.

BY MR. WOODS:

Q. Is a KC number?

A. Is a KC number, yes.

Q. And it's 174 KC what?

A. 52160.

Q. Now, do you know what the OC case number is for this Oklahoma City investigation?

A. Yes, I have it here in front of me on this envelope.

Q. Okay. What is it?

A. It's 174-OC-52160.

Q. Okay. Are you sure that's the case number rather than it being 56120?

A. Well, the way -- I don't recall the case number off the top

Cullen Scott - Cross

of my head, sir; but the way I read this, it's 52160.

Q. When was that case number placed on that envelope?

A. That was on the date of the search of the Nichols house, and that was April 22 --

Q. All right.

A. -- 1995.

Q. Are you aware that every piece of evidence that was taken out of that house had the wrong case number placed on it?

A. No, I'm not aware of that.

MR. WOODS: Thank you, sir.

No further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Scott, you conducted this search in Kansas; correct?

A. Yes, ma'am.

Q. And is that part of the reason why there was originally a Kansas City case number assigned to this evidence?

A. Yes. Kansas is in the Kansas City field office territory.

Q. And you're aware generally of how the FBI numbers evidence and gives case numbers; is that right?

A. Yes, ma'am.

Q. In this investigation, were there also searches in Arizona, New York, and Oklahoma City, and elsewhere?

A. There were.

Cullen Scott - Redirect

Q. And were various case numbers assigned because of the scope of this investigation?

A. That's correct.

Q. Is it your understanding that at a certain point that evidence was brought together in Oklahoma City and then here in Denver for this case?

A. That's right. Oklahoma City was declared office -- what we call office of origin in this case.

Q. Were those other numbers, the ones that you assigned in Kansas City and elsewhere, all brought under the Oklahoma City case number?

A. Yes, ma'am, that's correct.

MS. WILKINSON: No other questions, your Honor.

MR. WOODS: Just one clarification on that line of questioning.

THE COURT: All right.

RE CROSS-EXAMINATION

BY MR. WOODS:

Q. Mr. Scott, you're aware that Oklahoma City was the office of origin, weren't you?

A. It was -- it became the office of origin.

Q. That's where the crime occurred, wasn't it?

A. Yes, sir.

Q. Isn't that where the office of origin is in every FBI case?

A. Normally that would be the case.

Cullen Scott - Recross

Q. There was a case number assigned in Oklahoma City the day this crime occurred, wasn't there, on April the 19th, 1995?

A. Yes, I'm sure there was.

Q. And that case number went with this investigation from that day forward, April 19, '95, until this very day, didn't it?

A. Yes, it did, but auxiliary offices apparently used their own case numbers until it was all consolidated into one major case.

Q. And when you're putting the OC case number on pieces of evidence, you're putting that particular case number that derived out of Oklahoma City on April the 19th, aren't you?

A. I'm sorry, would you repeat the question?

Q. Yes. When you put the case number that says OC in the middle of it, Oklahoma City, you're using the case number assigned to the case on April the 19th, '95, aren't you?

A. Yes.

MR. WOODS: All right. Thank you.

MS. WILKINSON: He's excused, your Honor.

THE COURT: Agreed?

MR. WOODS: Yes, your Honor.

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

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. MACKEY: Yes, your Honor. FBI Agent Jerry Tucker.

THE COURT: All right.

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

(Jerry Tucker 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 Tucker, T-U-C-K-E-R.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Orenstein.

MR. ORENSTEIN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, Mr. Tucker.

A. Good morning.

Q. Would you tell the jury how you're employed, please.

A. I'm a special agent with the FBI assigned to the Omaha division.

Q. How long have you worked for the FBI?

A. 30 years.

Q. How long have you been stationed in Omaha?

A. Just about 10 years.

Q. Did you and colleagues of yours from the FBI participate in executing a search warrant in Mr. Nichols' house in Herington, Kansas, on April 22, 1995?

A. Yes.

Q. And what parts of the house were you involved in searching?

A. I was involved with the search in the living room, the dining area, laundry room, bathroom, part of the kitchen, and two basements.

Q. Now, you mentioned the living room and the dining room. Was the dining area within the larger room of the living room?

A. Yes, it was.

Q. Was there a dining table?

A. Yes.

Q. Did you yourself recover some items from that area?

A. Yes, I did.

Q. Let me ask you to look in your folder and see if you can find Government Exhibit 1995, please.

Do you have that there?

A. Yes, I do.

Q. Is that one of the items that you found on top of the dining table in Mr. Nichols' living room?

A. Yes, it is.

Q. What is 1995?

A. It's a Quarton fax to Terry Nichols.

Q. And when you say Quarton, could you spell that, please.

A. Q-U-A-R-T-O-N.

Q. And that's a fax to Mr. Nichols from that company?

A. Yes.

MR. ORENSTEIN: Government offers 1995, your Honor.

Jerry Tucker - Direct

MR. WOODS: No objection.

THE COURT: 1995 received.

BY MR. ORENSTEIN:

Q. And, Mr. Tucker, let me show you on the screen in front of you a portion of a clean copy of that that's been labeled as 1996. Do you see that?

A. Yes, I do.

Q. First of all, 1995 is discolored from the fingerprint process?

A. Yes.

Q. Is that a clean copy of the document that you found that's labeled 1995?

A. Yes, it is.

MR. ORENSTEIN: Government offers 1996 as demonstrative, your Honor.

MR. WOODS: No objection.

THE COURT: All right. 1996 is received for demonstrative purposes.

MR. ORENSTEIN: With the Court's permission, may I display it?

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Agent Tucker, there are some phone numbers that are listed on this page. First of all, in the upper right-hand corner, do you see a phone number there?

Jerry Tucker - Direct

- A. Yes, I do.
- Q. What is that number?
- A. The 1-800-520-8435.
- Q. And beneath that printed on the Quarton letterhead or faxed letterhead, are there other numbers there?
- A. Yes, there is.
- Q. What is the telephone number that is listed there?
- A. (210), the area code, 520-8430.
- Q. What is the date of this fax?
- A. April 13, 1995.
- Q. And it says it's to Terry Nichols; is that correct?
- A. Yes, it does.
- Q. And it has a phone number beneath that that is listed as a fax number?
- A. Yes.
- Q. Was there a fax in Mr. Nichols' house when you were searching there?
- A. I didn't see one.
- Q. Now, let me direct your attention --
- MR. ORENSTEIN: And I'll pull it up on the screen, your Honor. It's demonstrative Exhibit 1888 that's been received as demonstrative previously, and I'd like to show the witness page 15.
- BY MR. ORENSTEIN:
- Q. Agent Tucker, let me direct your attention to a portion of

Jerry Tucker - Direct

- this page of calls for Thursday, April 13, 1995. Do you have that in front of you?
- A. Yes, I do.
- Q. There is a series of calls there between Mr. Nichols' home and Quarton U.S.A. Limited; do you see those?
- A. Yes, I do.
- Q. And the numbers for Quarton U.S.A. Limited: Those are the numbers that are listed on the fax page?
- A. Yes.
- Q. And those are all in the morning -- I'm sorry, not all in the morning -- There's one in the morning and then two in the afternoon?
- A. Yes.
- Q. And then the fourth call is from Quarton, and that also is from a number that appears on the fax cover page?
- A. Yes.
- Q. And that call is to Catlin's IGA fax. Do you see that?
- A. Yes, I do.
- Q. Would you compare that telephone number to the fax number, the number listed to Terry Nichols' fax, on the cover page of the fax report on the --
- A. Yes, I have. They're the same.
- Q. Same number?
- A. Yes.
- Q. Now, let me direct your attention to the next page of

Jerry Tucker - Direct

Government Exhibit 1888, which lists calls on -- let me try that again -- which lists calls on April -- I'm sorry -- one more try -- listing calls on Friday, April 14, 1995. Do you have that in front of you?

A. Yes, I do.

Q. Now, the first call there is at 9:51 a.m. Do you see that?

A. Yes, I do.

Q. And that's to Mr. Nichols' home?

A. Yes.

Q. From the J & K Bus Depot in Junction City?

A. Yes.

Q. 20 minutes later there's the third call there at 10:11 a.m., and that's from Mr. Nichols' home. Do you see that?

A. Yes, I do.

Q. And it's to the Quarton U.S.A. Limited once again?

A. Yes.

Q. Is that number for Quarton one of the numbers that's listed on the fax cover page?

A. Yes, it is.

Q. Now, if you would reach into your folder and look for Government Exhibits 1993 and 2105, please.

I think if you'll look at the back of that, that might be it.

Do you have both of those items?

Jerry Tucker - Direct

A. Yes, I do.

Q. Now, were those among the other items that you found on the dining tabletop and put in the same evidence bag as the Quarton fax?

A. Yes, they are.

Q. Let's start with 1993, please. What is that?

A. It's a Kinko's receipt.

Q. And that's one of the items that was found on the tabletop?

A. Yes, it is.

MR. ORENSTEIN: Government offers 1993.

MR. WOODS: No objection, your Honor.

THE COURT: Received.

MR. ORENSTEIN: And if we could just display that briefly to the jury.

THE COURT: All right.

BY MR. ORENSTEIN:

Q. Does what's on the screen show what's in front of you?

A. Yes, it does.

Q. And if we could turn now to Government Exhibit 2105. What is that, please.

A. It's a business card for Terry Nichols.

Q. Was that card the only such card you found on the tabletop, or were there others?

A. There were others.

Q. So that was a sample that you took?

Jerry Tucker - Direct

A. Yes, it is.

MR. ORENSTEIN: And the Government offers Exhibit 2105, your Honor.

MR. WOODS: No objection.

THE COURT: Received, 2105.

MR. ORENSTEIN: And may I display it, please.

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Agent Tucker, is what the jury is seeing on their screen now a copy of Exhibit 2105?

A. Yes, it is.

Q. At the top it has the words "buy," "sell," "trade," and it describes various items. Do you see that?

A. Yes, I do.

Q. At the bottom there is an address and telephone number. Would you read those into the record, please.

A. The address is 1228 Westloop, No. 197, Manhattan, Kansas. Telephone number is (913) 258-3400.

Q. That telephone number is the telephone number we were seeing on the summary exhibit a few moments ago of calls between Mr. Nichols' home and Quarton; is that correct? That 258-3400 number?

A. Yes, it is.

Q. And the address on this card, 1228 Westloop, No. 197, Manhattan, Kansas, that was not the address of the residence

Jerry Tucker - Direct

you were searching; is that correct?

A. No, it's not.

Q. I'd like you to take a look, please, at Exhibit 572, Government Exhibit 572.

Do you have that there?

A. Yes, I do.

Q. Is that another one of the items you found on the dining tabletop in the living room?

A. Yes, it is.

Q. What is Government Exhibit 572?

A. It's a Marion National Bank notepad, phone pad.

Q. It's a little notepad --

A. Yes.

Q. -- from Marion National Bank.

MR. ORENSTEIN: Government offers Exhibit 572.

MR. WOODS: No objection.

THE COURT: Received 572.

MR. ORENSTEIN: And we've put some of this on the computer to display to the jury, if I may, your Honor.

THE COURT: All right.

BY MR. ORENSTEIN:

Q. First, does that show the cover of the notepad?

A. Yes, it does.

Q. Let me direct your attention and display to the jury the back of the third sheet inside of that.

Jerry Tucker - Direct

Do you see the name "Daryl Bridges" and some information below that?

A. Yes, I do.

MR. ORENSTEIN: Your Honor, at this time I'd like to publish a stipulation between the parties that the handwriting on that page being displayed to the jury is the handwriting of Mr. Nichols.

MR. WOODS: We stipulate to that, your Honor.

THE COURT: And what page is that?

MR. ORENSTEIN: It's the back of the third sheet.

THE COURT: Then it's agreed that the back of the third sheet, which you're now seeing on the screen, is the writing of Terry Nichols. And printing, I guess.

BY MR. ORENSTEIN:

Q. Now, if I -- whoops.

Thank you.

If I may turn to the fourth sheet there, the front of the fourth sheet, which you see on the screen now. Do you have that in front of you?

A. Yes, I do.

Q. There are names there for Jennifer McVeigh and an address and phone number, and then "Mike Fortier" and a couple of addresses and a phone number; do you see that?

A. Yes, I do.

MR. ORENSTEIN: Your Honor, I'd like to publish a

Jerry Tucker - Direct

stipulation at this point that the handwriting now being displayed to the jury from the front of the fourth page of the Marion National Bank notepad contains the handwriting of Mr. Terry Nichols.

MR. WOODS: We'd stipulate to that.

THE COURT: All right. Then it's agreed, and the jury will accept that stipulation.

BY MR. ORENSTEIN:

Q. Agent Tucker, let me direct your attention to another part of the search. You mentioned that you searched some areas in the basement of Mr. Nichols' home; is that correct?

A. Yes, I did.

Q. Now, let me show you, if I may, Government Exhibit 1774, Photo No. 4 in evidence. And you see some boxes there.

A. Yes, I do.

Q. And did you search among those boxes?

A. Yes.

Q. Let me show you Photo No. 8 from Government Exhibit 1774. That's one of the boxes we were just looking at in the previous photo; correct?

A. Yes.

Q. Did you look inside this box in particular?

A. Yes, I did.

Q. What did you find in there?

A. Ammonium nitrate in bottles.

Jerry Tucker - Direct

Q. Do you recall how many bottles?

A. There was six.

Q. Now, we see in this photograph that some of these bottles have labels. Did they all have labels?

A. My recollection is they all did.

Q. What was on the labels on these bottles?

A. It was "ammonium nitrate." It was either "prills" or "powder." It says that it was a fertilizer and explosive.

Q. The word "explosive" was on there as well "ammonium nitrate"?

A. The word "explosive" was highlighted in yellow.

Q. You should have with you -- I'm sorry. They're going to be in a box here.

MR. ORENSTEIN: If I may retrieve them to show the witness.

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Agent Tucker, I've placed before you Government Exhibit 2106 and 2108. Do you see those?

A. Yes.

Q. Do you recognize them?

A. Yes, I do.

Q. And if you would reach into those plastic bags and pull out the bottles themselves, which are the exhibits.

Which one do you have there?

Jerry Tucker - Direct

A. I13. It's 2016.

Q. You used two numbers, 2016 is the Government exhibit one; correct?

A. Yes, it is.

Q. What is I13?

A. It would be the log number that we gave it the night we took it.

Q. You assigned different numbers to different items for purposes of your evidence log?

A. Yes, sir.

Q. Did you also have 2018 there?

A. Yes, I do.

Q. Is that another one of the bottles that you found?

A. Yes, it is.

MR. ORENSTEIN: Government offers 2016 and 2018.

MR. WOODS: May I examine the label, your Honor?

THE COURT: Yes, please.

MR. WOODS: Thank you.

Thank you. That's okay.

No objection, your Honor.

THE COURT: They are received. 2016, 2018.

BY MR. ORENSTEIN:

Q. Agent Tucker, let me ask you to take a look, first, at

2016. Now, these are -- the exhibits that have just been entered -- those are two of the six bottles; correct?

Jerry Tucker - Direct

A. Yes, it is.

Q. 2016 has a label on it. Can you read what the description of the product is on that label?

A. "Ammonium nitrate fertilizer, explosive, 300 prills."

Q. Now, you mentioned the word "prills." Does that bottle actually contain prills?

A. No, it does not.

Q. What does it contain?

A. Powder.

Q. Is there a price sticker on 2016?

A. Yes.

Q. What does the price sticker say?

A. "5." \$5.

Q. "5" with a dash?

A. Yes.

Q. And turning to 2018. Now, 2016 that you were just looking at contained powder; is that correct?

A. Yes.

Q. What does 2018 contain?

A. Prills.

Q. And what is the price -- is there a price sticker, first of all?

A. Yes.

Q. What does it say?

A. "3.00." \$3.

Jerry Tucker - Direct

Q. Just going back to 2016 for a moment, you were reading the label. You mentioned some numbers under the word "ammonium nitrate, fertilizer"?

A. Yes.

Q. Could you just read into the record what that says?

A. "30-0-0" (sic).

Q. Now, we don't have all six in front of you; isn't that correct?

A. Right.

Q. Have you seen and helped prepare a chart that showed -- summarizes the contents and the price stickers and the descriptions on each of the six bottles that you found?

A. Yes, I did.

Q. Is that Government Exhibit 2018A?

A. Yes, it is.

MR. ORENSTEIN: Government offers 2018A as a summary exhibit, your Honor.

THE COURT: It's illustrative, I think.

MR. ORENSTEIN: Yes, it's demonstrative.

MR. WOODS: Is this in lieu of bringing in the six bottles?

MR. ORENSTEIN: Instead of putting in all six, yes.

MR. WOODS: No objection.

THE COURT: 2018A is received as a demonstrative exhibit.

Jerry Tucker - Direct

MR. ORENSTEIN: And if I may display it, your Honor.

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Now, Agent Tucker, we have on the screen this demonstrative exhibit. Does that show a description of the six bottles that you found in Mr. Nichols' basement?

A. Yes, it does.

Q. It says that three of the bottles were of 24-ounce size?

A. Yes.

Q. And the other three were 8-ounce size; correct?

A. Yes.

Q. Did they all contain prills?

A. No.

Q. This shows that one of 24-ounce size contained prills, the other two contained powder; and one of the 8-ounce size contained prills, and the other two contained powder; is that correct?

A. That's correct.

Q. What was the price sticker for the 24-ounce powder bottles?

A. They were \$12.

Q. And for the 24-ounce prill bottles?

A. \$8.

Q. What was the price for the 8-ounce powder bottles?

A. \$5.

Q. And for the 8-ounce prill bottles?

Jerry Tucker - Direct

A. \$3.

Q. Now, to your knowledge, were those six bottles of ammonium nitrate the total quantity of ammonium nitrate that was found inside of Mr. Nichols' home?

A. As far as I know, yes.

Q. In addition to the bottles, did you also find some instruction labels in the basement concerning ammonium nitrate?

A. Yes, I did.

Q. Did you take any of those labels?

A. Yes, I did.

Q. Did you take all of them?

A. No.

Q. Let me ask you to take a look at Government Exhibits 2025 and 2026.

Do you have those in front of you?

A. Yes.

Q. First of all, are they both the same?

A. Yes.

Q. And were those the samples of instruction labels that you found?

A. Yes, they are.

Q. Also in Mr. Nichols' basement?

A. Yes.

MR. ORENSTEIN: Government offers Exhibits 2025 and 2026.

Jerry Tucker - Direct

MR. WOODS: Are you going to display them here?

MR. ORENSTEIN: Yes.

MR. WOODS: May I take a look at them?

THE COURT: Yes.

MR. WOODS: Thank you.

Thank you.

No objection, your Honor.

THE COURT: They're received, 2025, 2026.

MR. ORENSTEIN: And may I display 2025, your Honor?

THE COURT: All right.

BY MR. ORENSTEIN:

Q. Agent Tucker, do you have on the display screen Exhibit 2025?

A. Yes, I do.

Q. First of all, what's written at the top there?

A. "Plant food fertilizer."

Q. Now, beneath it says "34-0-0," do you see that?

A. Yes, I do.

Q. If you can compare that to what's on the bottles, is that the same as what's on the bottles?

A. Yes.

Q. Before you said "30-0-0," but it says on the bottle "34"?

A. It says "34" on the bottle.

Q. Now, beneath --

MR. WOODS: I'm confused. Where does the "30-0-0"

Jerry Tucker - Direct

come from?

BY MR. ORENSTEIN:

Q. Was that just a misstatement when you said --

A. It would have been a misstatement. The bottles say "34-0-0."

MR. WOODS: Thank you. I'm sorry to interrupt.

THE COURT: All right.

BY MR. ORENSTEIN:

Q. Now, beneath the 34-0-0, there's a description of the product and some directions. Do you see that?

A. Yes.

Q. And that's basically for using this as plant food; is that correct?

A. Yes.

Q. Can you read into the record what appears beneath those three paragraphs.

A. It's an address for Ground Zero Impact, 1228 Westloop, No. 197, Manhattan, Kansas, 66502.

Q. Now, when you recovered these instruction sheets during

your search, had you ever heard of a company called Ground Zero Impact?

A. No, I did not.

Q. Did you know at that time what was located at the Manhattan, Kansas address listed there for Ground Zero Impact?

A. No, I didn't.

Jerry Tucker - Direct

Q. But you see that that's the same address as on Mr. Nichols' business card?

A. Yes, it is.

Q. Now, in addition to these labels about Ground Zero Impact, did you also find containers with ammunition in various parts of the basement?

A. Yes, I did.

Q. And in what kinds of containers did you find ammunition?

A. Ammo boxes, cardboard boxes, and tin can.

Q. I'm sorry?

A. And a tin can, cookie can.

Q. So some of the ammo cans and other items that you seized contained ammunition; they weren't empty?

A. That's correct.

MR. ORENSTEIN: Your Honor, with Agent Tongate's assistance, I'd like to show several items to the witness.

THE COURT: All right.

BY MR. ORENSTEIN:

Q. Agent Tucker, I've loaded you up there with a few exhibits. For the record, do you have in front of Government Exhibit 1860?

A. Yes, I do.

Q. 1861?

A. Yes, I do.

Q. 1862?

Jerry Tucker - Direct

A. Yes.

Q. 1864?

A. Yes.

Q. And 1865?

A. Yes.

Q. Do you have all of those in front of you?

A. Yes, I do.

Q. Now, you looked at those before coming to court, didn't you?

A. Yes.

Q. In 1860, 1862, 1864, and 1865 are there separately marked samples of ammunition?

A. Yes.

Q. Okay. And those were just samples from what you had found?

A. Yes.

Q. Now, do you recognize all of those exhibits as the ammunition cans and containers that you found in Mr. Nichols' basement on April 22?

A. Yes, I do.

MR. ORENSTEIN: Government offers 1860, 1860A, 1861, 1862, 1862A, 1864, 1864A, 1865, and 1865A.

THE COURT: I haven't heard these A described.

MR. ORENSTEIN: I'm sorry.

BY MR. ORENSTEIN:

Q. These separately marked samples that you just mentioned a

Jerry Tucker - Direct

moment ago --

A. Yes.

Q. -- those are marked with the A numbers?

A. Yes.

Q. So 1861A is a sample from 1860 -- 1861, rather?

A. Yes.

MR. ORENSTEIN: With that, your Honor --

MR. WOODS: I think I understand. No objection.

THE COURT: So these exhibits are received. 1860, 1860A, 1862, 1862A, 1864, 1864A, 1865, 1865A, and 1861.

MR. ORENSTEIN: May I have a moment, your Honor?

THE COURT: Yes.

MR. ORENSTEIN: Thank you, your Honor. We have nothing further.

THE COURT: Mr. Woods.

MR. WOODS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good morning, Agent Tucker.

A. Good morning.

Q. My name is Ron Woods. I'm one of the lawyers appointed by the district court in Oklahoma City to help Terry Nichols in this case.

You and I have never met; is that correct?

A. That's correct.

Jerry Tucker - Cross

Q. Okay. You've been in the FBI for 30 years?

A. Yes, sir.

Q. What was your educational background to become qualified to be in the FBI?

A. Four-year college degree and three years of on-the-job training as a support employee.

Q. I'm sorry. I couldn't hear you.

A. I have a four-year college degree, and I have five years support time, which would qualify me for consideration for an agent's class.

Q. Okay. Where did you go to college?

A. Southeastern University.

Q. Is that that school in Washington that a lot of the clerks go to?

A. Yes.

Q. And then you became a agent after five years?

A. Yes, sir.

Q. Okay. In April '95, you were assigned to Omaha?
A. Yes.
Q. And you got assigned to go to Herington; is that correct?
A. Yes, sir.
Q. And when did you arrive in Herington?
A. Would have been on the evening of the 21st.
Q. And you participated in the search on Saturday, the 22d?
A. Excuse me. I got in Kansas the 21st. I believe I got in

Jerry Tucker - Cross

Herington on the 22d.

Q. Okay. That's Saturday?
A. Yes, sir.
Q. And you took part in the briefing prior to the execution of the search warrant?
A. Yes.
Q. Did you read the search warrant?
A. Yes, I did.
Q. Okay. And who was the affiant on this search warrant? Do you recall?
A. I don't recall.
Q. How many people were there in the briefing?
A. I don't know.
Q. Who led the briefing?
A. I don't recall.
Q. What team were you on?
A. I was a part of the Omaha team.
Q. Okay. Who was part of your team as you went from room to room to search? Who were the members of your team?
A. Mary Jasnowski was the supervisor, and she gave me the assignments. I worked with quite a few other individuals during the course of the search.
Q. You were sort of in every room, weren't you?
A. In the house, yes.
Q. And you didn't mention the bedroom; but you helped search

Jerry Tucker - Cross

the bedroom, too, didn't you?

A. No, sir.
Q. Weren't you part of the team that was in the bedroom when Mr. Tongate found the money?
A. No, I was not.

MR. WOODS: May I have one moment, your Honor.

THE COURT: Yes.

BY MR. WOODS:

Q. Do you recall the bedroom being designated 1B?
A. I believe so.
Q. And you recall Mr. Nellis being the one that kept the recovery log of the items found in that room?
A. I believe so.
Q. And that team consisted of William Nellis, Joanne Thomas, Jerry Tucker, and Larry Tongate?
A. It's possible.

Q. Well, have you reviewed the evidence recovery log in this case before you testified about the evidence that you recovered?

A. I don't believe I recovered any evidence from the bedrooms.

Q. You were on that sheet, weren't you, that items were recovered there?

A. I may be on a sheet, but I didn't recover any evidence in the bedroom.

Q. Do you recall Mr. Tongate recovering some money in the

Jerry Tucker - Cross

bedroom?

A. I learned that he had, yes.

Q. Did you learn it while you were there observing it?

A. No.

Q. All right. You recall how much money was recovered?

A. I don't recall.

Q. All right. Now, the exhibits that were shown -- the Kinko's receipt appeared to be real smudged and dirty, we couldn't read it, and it was taken off the screen real quick. Do you have that in front of you?

A. Yes, I do.

Q. Can you tell us the date and time that's on that Kinko's receipt?

THE COURT: Is this 1993?

MR. WOODS: Yes, your Honor, Exhibit 1993.

THE COURT: All right.

THE WITNESS: The time is 2:15. The date is 4-18-95.

BY MR. WOODS:

Q. And it's a Kinko's where?

A. On Anderson Street, Manhattan, Kansas.

Q. All right. Does it say what the item is that was purchased?

A. It lists a price, but I don't know what item was purchased --

Q. All right.

Jerry Tucker - Cross

A. -- from the receipt.

Q. Was that laying next to the box of business cards where you found the business cards?

A. It was in that area, yes.

Q. And you testified to the jury that you took one of the business cards out of the box?

A. Yes.

Q. How many were in the box, approximately? I mean, you didn't count them, of course, but --

A. I believe it was rather full.

Q. All right. And the business card that was shown on the screen was real smudged. It wasn't dirty like that when you took it out of the box, was it?

A. No.

Q. Was that the fingerprint process that made it dirty like

that?

A. I would assume so.

Q. You didn't make it dirty like that?

A. No, sir.

Q. Do you recall while you were there at the house, 109 South 2nd Street, how far away the Catlin's Grocery was?

A. I'm not aware of the grocery.

Q. Okay. There was an open lot, wasn't there, behind Mr. Nichols' house?

A. I don't know. I wasn't behind, in the lot.

Jerry Tucker - Cross

Q. You were just only in the house, didn't notice the surroundings?

A. It was dark by the time I got there.

Q. What time did you get there?

A. A little after 7, I believe.

Q. And this is in April?

A. April.

Q. Daylight Savings Time?

A. It appeared to me it was towards dusk time of the day.

Q. Okay. You didn't notice the surroundings, notice where Catlin's Grocery was?

A. No, I didn't.

Q. Did you ever go around Herington? It's not that big, is it?

A. I recall visiting one cafe there.

Q. Did you ever notice where Catlin's was?

A. No, sir.

Q. Okay. You're aware that some businesses have fax machines to receive faxes for customers, aren't you?

A. Yes.

Q. Have you seen any sacks of fertilizer, sir, in your career in the FBI, in 30 years?

A. Yes, I've seen fertilizer.

Q. And don't they have an explosive label on them? Isn't that required?

Jerry Tucker - Cross

A. I really don't know.

Q. Have you examined the sacks of fertilizer, 34-0-0, that are alleged to be in connection with this case in any location?

A. No.

Q. Okay. Haven't seen any explosive label on any label for ammonium nitrate?

A. I don't understand what you're saying.

Q. Yes, sir. Have you seen any labels on commercially sold ammonium nitrate?

A. I've never bought any.

Q. Have you seen any in connection with this case?

A. It's only the ones I have here.

Q. Well. Are you aware that it's a state requirement that you put an explosive label on ammonium nitrate fertilizer?

A. I'm not aware of that, no.
Q. Now, you distinguished for the jury the difference in price between ground and prill; is that correct?
A. Yes, I did.
Q. And are you aware that the ammonium nitrate comes in prill forms?
A. Yes.
Q. And that some labor has to be applied to get it to a ground state?
A. I don't know how they do that.
Q. Well, didn't you see -- didn't the FBI seize a blender from

Jerry Tucker - Cross

Mr. Nichols' house and a paper funnel?
A. I don't know that they did.
Q. You're not aware of what was seized at the house?
A. I'm aware of what I've taken.
Q. Were you aware of what Mr. Nichols told the FBI about how he blended it and put it in bottles?
A. No, I'm not aware of that.
Q. And you haven't seen the blender that was seized from the house?
A. I don't recall seeing a blender.
Q. At any rate, the prices on the bottles indicate a difference between ground and prill; is that correct?
A. Yes, sir.
Q. And the directions indicate how to mix it with water as a plant food.
A. Yes.
Q. Have you been to any gun shows, Mr. Tucker?
A. I don't believe I have.
Q. You don't believe you have?
A. I can't recall ever being to one.
Q. Okay. And the ammunition that you have stacked in front of you there is of various calibers; is that correct?
A. Yes.
Q. In various containers?
A. Yes.

Jerry Tucker - Cross

Q. There are price tags on the bottles of ammonium nitrate; is that correct?
A. Yes.
Q. Okay. Now, did you put a case number on the items that you seized?
A. What do you mean by a "case number"?
Q. Do you know what a case number is in the FBI?
A. An FBI case number?
Q. Yes, sir.
A. Yes.
Q. Did you put that case number on any of the items that you seized?
A. Yes.

Q. Which items did you place it on?
A. I put it on the boxes and the containers I put them in.
Q. What case number did you put on the items?
A. I put down the case number that we were given at the time and --
Q. What is it, for the record?
A. It is 174A-OC-52160.
Q. Now, that's not the case number, is it, for the Oklahoma City bombing investigation?
A. No, it's not.
Q. Did you label all the items you seized with that number?
A. Yes.

Jerry Tucker - Cross

Q. All right.
MR. WOODS: Thank you, your Honor, no further questions.

THE COURT: Any redirect.

MR. ORENSTEIN: Yes, your Honor. I also -- I apologize. I neglected one of the items, if I may do that, rather than recall the agent later, with Counsel's indulgence as well.

REDIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. Agent Tucker, I've placed before you Exhibit 1867. Do you see that?
A. Yes, sir.
Q. And if you would look inside that and look for two devices marked 1867A and 1867B.
A. Okay.
Q. Do you recognize those?
A. Yes, I do.
Q. Are those items that you found in the basement storage area of Mr. Nichols' house?
A. Yes, they are.
Q. What are 1867A and B?
A. The label says they're an anti-intrusion device, a detector, anti-intrusion device.
Q. And that's what it says on both of them?

Jerry Tucker - Redirect

A. Yes.
Q. And 1867 is the can in which you found them?
A. Yes, sir.

MR. ORENSTEIN: Government offers 1867, 1867A, and 1867B.

MR. WOODS: Is this a different one than the one that was previously entered?

MR. ORENSTEIN: Yes.

THE COURT: Marked differently, anyway.

MR. WOODS: I'm sorry.

THE COURT: It's marked differently, or these are marked differently.

MR. WOODS: Thank you.

Okay. Thank you.

No objection, your Honor.

THE COURT: All right, 1867, 1867A and B are received.

MR. ORENSTEIN: Thank you, your Honor.

BY MR. ORENSTEIN:

Q. Now, Agent Tucker, on cross-examination, Mr. Woods was asking you about the Kinko's receipt and the business cards that you found; correct?

A. Yes.

Q. Now, do you know when the business cards were purchased?

A. No, I don't.

Q. But if they were purchased with that receipt, then they

Jerry Tucker - Redirect

weren't purchased until April 18; is that correct?

A. Yes.

Q. Now, you were also asked about your knowledge of fertilizer being sold commercially and labeling requirements. Do you recall being asked about that?

A. Yes.

Q. Do you know of any state law that requires commercially sold fertilizer to be called Ground Zero Impact?

A. No, I'm not.

MR. ORENSTEIN: Thank you, I have nothing further, your Honor.

RE CROSS-EXAMINATION

BY MR. WOODS:

Q. Now, Mr. Tucker, the labels on those bottles aren't calling the ammonium nitrate Ground Zero Impact, are they?

A. No, sir.

Q. That's the name of the company that's selling them, isn't it?

A. I would assume so.

Q. Okay. Now, did you put labels on these new objects that have come in? By "labels," I mean did you put your initial on it and did you also put the case number on it?

THE COURT: This is 1867A?

MR. WOODS: Yes. I'm sorry, your Honor. For the record, you're correct.

Jerry Tucker - Recross

BY MR. WOODS:

Q. The new items the prosecutor just offered into evidence, 1867 and A and B, I believe: Did you put your initials and the case number on that?

A. Yes, I did.

Q. Is it the wrong case number again?

A. Yes, it is.

MR. WOODS: Okay. Thank you. Nothing further, your Honor.

MR. ORENSTEIN: Nothing further. The witness is excused.

THE COURT: Agreed?
MR. WOODS: He's excused.
THE COURT: You may step down. You're excused.
If somebody will get these exhibits, please.
The clerk will take care of the exhibits.
Next witness.
MR. MACKEY: Yes, your Honor. We'll call Linda

Pascoe.

THE COURT: Go ahead and swear the witness.
THE COURTROOM DEPUTY: Raise your right hand, please.

(Linda Pascoe affirmed.)

THE COURT: Please be seated.
THE COURTROOM DEPUTY: Have a seat here, please.

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

THE WITNESS: Linda K. Pascoe. P-A-S-C-O-E.
THE COURTROOM DEPUTY: Thank you.
MR. ORENSTEIN: May I proceed, your Honor.
THE COURT: Yes.
MR. ORENSTEIN: Thank you, sir.

DIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, Miss Pascoe.
A. Good morning.
Q. Where are you from, please.
A. Hot Springs, Arkansas.
Q. What do you do for a living in Hot Springs?
A. I work in Arkansas Bank and Trust Company as the operating
officer.
Q. Does the Arkansas Bank and Trust have more than one branch?
A. Yes, it does.
Q. Where is the branch located in which you work?
A. The downtown main branch.
Q. Downtown Hot Springs?
A. Yes. 835 Central Avenue.
Q. About how far is that from Royal, Arkansas?
A. About 20 miles, 15 to 20.
Q. And now, does the Arkansas Bank and Trust Company rent out
safe-deposit boxes?

Linda Pascoe - Direct

A. Yes, sir, they do.
Q. And does the bank keep any records in connection with the
rental of its safe-deposit boxes?
A. Yes, sir, we do.
Q. Are you familiar with those records as part of your duties?
A. Yes, sir.
Q. I'd like you to reach into your folder and find, if you
can, Government Exhibit 1872.

Do you have that, ma'am?

A. Yes, I do.
Q. Do you recognize 1872?
A. Yes, sir.
Q. What is it, please?
A. It's a safe-deposit record agreement. It's also disclosure

and signature card for the safe-deposit box at our ABT, between us and our client.

Q. ABT: That's your bank, Arkansas Bank and Trust?

A. Yes.

Q. Is that a record that's maintained in the ordinary course of the bank's business?

A. Yes, it is.

MR. ORENSTEIN: Government offers 1872, your Honor.

MR. TIGAR: No objection.

THE COURT: Received, 1872.

MR. ORENSTEIN: And if I may display it.

Linda Pascoe - Direct

THE COURT: Yes.

MR. ORENSTEIN: Thank you, sir.

BY MR. ORENSTEIN:

Q. Now, ma'am, let me ask you: Looking at that record, who is renting that box -- First of all, what is the box number?

A. Box No. 3092.

Q. Who is renting Box 3092 at the Hot Springs branch of your bank in the fall of 1994?

A. Carol M. Moore and Roger E. Moore.

Q. Now, do you have any personal knowledge, yourself, of those two persons besides whatever you see in the records?

A. No, the banking records.

Q. Did you also look for bank records concerning Mr. Terry Nichols?

A. Yes, sir, we did.

Q. Did your bank have any such records?

A. No, sir.

Q. Now, you mentioned that people renting this box, 3092, were Roger Moore and Carol Moore; is that right?

A. Yes, sir.

Q. According to this record, Government Exhibit 1872, when did they rent that box? When did they begin renting it?

A. Date rented was October 15, 1991.

Q. And when was this box closed out?

A. December 2, 1994.

Linda Pascoe - Direct

Q. Was anyone other than Roger Moore or Carol Moore authorized to use that safe-deposit box?

A. No, sir.

Q. And if anyone else was authorized to use it, would it be listed on this form?

A. Yes, sir.

Q. Now, if you look up in the upper right-hand corner, it says Box No. -- let me focus your attention there -- Box No. 3092-9.

A. Yes.

Q. Did can you explain the "dash 9," please.

A. "Dash 9" is our branch location. We rent other safety deposit boxes at other areas, and this gives us the area that box is in.

Q. So this is the record for the only 3092-9 box in downtown Hot Springs?

A. At the downtown branch, yes.

Q. Beneath the names at the top, there's a description, a physical description of the people who rented boxes. Do you see that?

A. Yes, sir, the size.

Q. Yes, size, weight, hair, etc. What is that there for?

A. That's to describe the person coming in so that if the clerk happens to be a different clerk, they'll have something to match their ID to, to make sure the picture and ID match to sign and open the box.

Linda Pascoe - Direct

Q. It's another security measure?

A. Right.

Q. Let me focus your attention, please, on the sort of middle of the right-hand side of the document, where it says, "release of the box."

A. Yes, sir.

Q. Can you explain what that means?

A. When they come in to release the box or close out the box, the customer must acknowledge the fact that they've been into the box, there is nothing there, and they no longer wish to have a box.

Q. And when did that happen in this case?

A. December 2, 1994.

Q. That same day, December 2, 1994, did Roger Moore and Carol Moore take out another box at the same branch?

A. Yes, sir, they did.

Q. Let me ask you to look at Government Exhibit 1872A, which you should have with you.

Do you have that?

A. Uh-huh. Yes, sir.

Q. What is that, please.

A. It's a safe-deposit record and agreement between Arkansas Bank and Trust and Carol M. and Roger E. Moore.

Q. And what is it dated?

A. December 2, 1994.

Linda Pascoe - Direct

MR. ORENSTEIN: Government offers -- I'm sorry.

BY MR. ORENSTEIN:

Q. Was that kept in the ordinary course of your business?

A. Yes, it is.

MR. ORENSTEIN: Government offers 1872A.

MR. TIGAR: No objection, your Honor.

THE COURT: Received.

BY MR. ORENSTEIN:

Q. And the date you just mentioned, December 2, 1994: That's the same date that the earlier box was closed out?

A. Exactly.

Q. Okay. Going back to 1872, the earlier box, how many keys

were issued when that box was rented out?

A. You're talking box 3092, the original box?

Q. Yes.

A. There were two keys issued.

Q. And is that reflected on the rental agreement?

A. Yes, it is.

Q. Now, when the Arkansas Bank and Trust Company rents out a safe-deposit box, how does it package its keys? Are they packaged in any way?

A. They -- they're packaged in small envelopes with a snap on them that each key is put in an individual envelope and given.

Q. Now, let me ask you to find 1873 in evidence, which should be in your folder. Do you have that there?

Linda Pascoe - Direct

A. Yes, sir.

Q. And why don't you pull it out from that plastic envelope.

Tell the jury if you recognize what Exhibit 1873 is.

A. Yes. It's one of the envelopes we place the keys in.

Q. And let me ask you to open up the envelope and take out what's inside.

A. Okay.

Q. Do you recognize that as one of the keys for an Arkansas Bank and Trust box?

A. Yes, sir.

Q. And does it have the box number stamped on it?

A. Box No. 3092.

MR. ORENSTEIN: May I retrieve the exhibit for a moment, your Honor --

THE COURT: Yes.

MR. ORENSTEIN: -- to display it on the ELMO?

Thank you.

BY MR. ORENSTEIN:

Q. Do you see there, Miss Pascoe, the back of the envelope that has the letter M written on it?

A. Yes, sir.

Q. Is that a marking there that's placed by the bank?

A. No, sir.

MR. ORENSTEIN: Thank you, your Honor. I have nothing further on direct.

Linda Pascoe - Direct

THE COURT: Mr. Tigar.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Good morning, Miss Pascoe.

A. Good morning.

Q. My name is Michael Tigar. I'm one of the lawyers appointed to help out Terry Nichols. And I just want to get some details about how the safe-deposit box system works so that our record will be complete.

I'm going to place on the device here the -- what's been received as Government Exhibit 1872. Do you have a copy

of that up with you?

A. Yes, sir.

Q. All right. Now, if we look here, we see that the box is rented in the name of Carol Moore; correct?

A. Right.

Q. And then the other name is Roger Moore, and after that is the word "husband"; correct?

A. Right.

Q. Now, where did you get the information that Roger Moore is the husband of Carol Moore?

A. That was given to us by Miss Moore, Mr. Moore.

Q. Would it be given to you by the customer?

Now, again, you didn't -- did you handle any part of the transaction that we're looking at?

Linda Pascoe - Cross

A. No, sir, just the security end of it to make sure the documents were right.

Q. All right. So what we're looking at are the bank records, and what we know is what you can tell from the records; right?

But the person who rents it, they tell you what the relationship is; right?

A. Right.

Q. And in addition to telling you that Mr. Moore was her husband, Mrs. Moore also signed on at least one occasion a survivorship contract; right?

A. Right.

Q. And that is attached to 1872A; and that just tells the bank that if one of these two people is -- dies, that the other one has the right to come in and get in the box; right?

A. Exactly.

Q. Looking back at 1872, you issued two keys; correct?

A. Yes, sir.

Q. And that we can see way down at the bottom here, it says, "Receipt of two keys is hereby acknowledged"; correct?

A. Yes, sir.

Q. Now, the way this works is that the two people who are on the contract have the right to come in and get in the box; correct?

A. Yes, sir.

Q. And when they -- a person shows up at the bank and says,

Linda Pascoe - Cross

"Hello, I am the box holder," they present their key and some identification; right?

A. Yes, sir.

Q. And you got to have both things, you have to have the key and you have to have something that identifies you as the same person that rented it; correct?

A. Yes, sir.

Q. That is, if -- if I showed up and said that my name is Roger Moore and you looked and you saw that I have blue eyes instead of green and I didn't have the same color hair and

didn't look anything like him, then I wouldn't get in even if I had the key; correct?

A. More than likely you wouldn't get in the box.

Q. That's the way you plan it, that I wouldn't get in there?

A. Right.

Q. The person who has the key, that alone didn't get them in the box? Another key is needed; is that the way you work it?

A. Yes, sir.

Q. So simultaneously the box holder and another employee of the bank have to be at the box in order to open it up and get it out; right?

A. Yes, sir.

Q. Now, when somebody rents one of these boxes, you don't have any way of knowing what they put in the there; correct?

A. Correct.

Linda Pascoe - Cross

Q. You advertise the boxes as being suitable for their confidential documents; is that right?

A. Yes, sir.

MR. TIGAR: Thank you very much. I have nothing further, your Honor.

THE COURT: Any redirect?

MR. ORENSTEIN: Very briefly, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. The procedures for entering the box and for using it, that's something that you explain -- not you personally, but the bank explains to its customers when they rent the boxes; correct?

A. Right.

Q. But if somebody has a key who isn't a customer, you don't know whether they would know that or not?

A. No.

Q. And you were asked about what the box is suitable for containing. Does the record that you've offered here today -- does that say how large the box was?

A. Yes.

Q. Was it 3 inches by 10 inches?

A. Right.

MR. ORENSTEIN: Thank you. Nothing further.

MR. TIGAR: Nothing further, your Honor.

THE COURT: Witness excused, I take it.

MR. ORENSTEIN: Yes, sir.

THE COURT: Agreed?

MR. TIGAR: Yes, sir.

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

We'll take our midmorning recess, members of the jury, which of course is subject to the same cautions and restrictions as all recesses were before and still are of

please keep open minds, avoiding discussion among yourselves and all others about anything connected with the case and continuing to avoid anything outside the evidence that could influence you in this case.

You're excused now, 20 minutes.

(Jury out at 10:26 a.m.)

THE COURT: We have some exhibits coming up, I assume, through a witness that I see scheduled here where there's objection? These Exhibits 975 and 1244.

MR. WOODS: Is that Mr. Franey?

THE COURT: Yes.

MR. WOODS: Your Honor, they've agreed to withdraw those.

MS. WILKINSON: We don't intend to offer them.

THE COURT: All right. And then there's also a motion concerning testimony of a Roger Moore.

MR. TIGAR: Yes, your Honor.

THE COURT: And I see him on the schedule.

MS. WILKINSON: Yes, we filed a motion, also, your Honor.

THE COURT: I see it. Do you have argument in addition to the motion?

MR. TIGAR: No, your Honor. We -- this matter has been briefed and argued extensively. We wanted to let the Court know what the state of the record was.

THE COURT: All right. The motion to bar the testimony is denied.

The motion on impeachment is also denied because I don't consider this to be an impeachment issue, but an issue relating to the nature of the business and the nature of gun shows. So those are the rulings, I believe, for -- that we need to make on matters that are coming up soon.

We'll take the recess.

(Recess at 10:28 a.m.)

(Reconvened at 10:48 a.m.)

THE COURT: Be seated, please.

(Jury in at 10:48 a.m.)

THE COURT: Next witness, please.

MR. MACKEY: Yes, your Honor. United States would next call Ms. Peggy Money.

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

(Peggy Money 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: Peggy Sue Money, M-O-N-E-Y.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Orenstein?

MR. ORENSTEIN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, Ms. Money.

A. Good morning.

Q. Where are you from, ma'am?

A. Jacksonville, Florida.

Q. Now, with a name like Money, you wouldn't be in the banking industry, would you?

A. Yes, I am, in fact.

Q. Well, which bank do you work for?

A. First Union National Bank.

Q. Where is that located?

A. It's located in Jacksonville, but they have offices throughout Florida, North Carolina, Georgia, Virginia, and the New England states.

Q. Your office is in Jacksonville?

Peggy Money - Direct

A. Yes.

Q. Does the bank have a branch in Sebastian, Florida?

A. Yes, they do.

Q. What are your duties with the bank?

A. My duties include -- I manage the area that handles liens, levies, and garnishments. We also handle the research on records subpoenas and also witness subpoenas, and part of that responsibility is attending depositions and court appearances for the state of Florida.

Q. Now, does the First Union National Bank of Florida rent out safe-deposit boxes?

A. Yes, they do.

Q. Does the bank keep records in connection with those rentals?

A. Yes, they do.

Q. It's part of your job to be familiar with those records?

A. Yes, sir.

Q. You've got a folder in front of you. I'd like you to see if you have there Government's Exhibit 1869.

A. Yes.

Q. Do you recognize that?

A. Yes, sir.

Q. What is Government's Exhibit 1869?

A. This is a safe-deposit box contract.

Q. Is it a certified copy of a record and you made that copy?

Peggy Money - Direct

A. Yes, it is.

Q. And is it kept in the ordinary course of your bank's business?

A. Yes.

MR. ORENSTEIN: I'd like to offer Exhibit 1869, your Honor.

MR. TIGAR: No objection, your Honor.

THE COURT: 1869 received.

MR. ORENSTEIN: Let me display it, if I may, your Honor.

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. That's part of the record, 1869, that's on your screen now?

A. Yes.

Q. Now, this is a record for Box 347. Is that correct?

A. Yes.

Q. At which branch?

A. At the Branch 583. That's the numeric number for the Sebastian branch.

Q. That's the number we see right at the top there, 583?

A. Yes.

Q. Now, in -- according to this record, in the fall of 1994, who was renting Box 347 at the Sebastian branch of your bank?

A. The box was rented in the name of Carol Moore and Roger E. Moore.

Peggy Money - Direct

Q. Now, Ms. Money, aside from what you may see in these records, do you know anything personally about Carol Moore or Roger Moore?

A. No.

Q. Did you also receive a request to search the bank's records for records concerning a person named Terry Nichols?

A. Yes.

Q. Were there any such records in the bank's files?

A. No, sir.

Q. Now, this document that is on the screen still, the rental for Box 347, according to this record, when was the box rented?

A. July 21, '94.

Q. And starting on July 21, 1994, who was authorized to have access to Box 347?

A. Carol Moore and Roger E. Moore.

Q. Was anyone other than those two persons authorized to have access to that safe-deposit box?

A. No.

Q. If someone else were authorized, would that show up on the records that you've got there?

A. Yes, it would.

Q. Now, the record shows the size of the box, if I may focus in on it there. Is that that "3x10"?

A. Yes, that's the size.

Q. What does that mean?

Peggy Money - Direct

A. Well, they've got various sizes. That's 3 inches by 10.

Q. How deep is that, by the way?

A. Pardon.

Q. How deep is that?

A. Is 3-by-10 inches.

Q. How far back does it go? Do you know?

A. Well, it would be 3-by-10, so the deep would be 10 inches. Sorry.

Q. Now, returning to the full document, there is another portion here which I'd like to ask you about. It says, "Closed 12-13-94." Can you explain that, please.

A. They came in and requested the --

MR. TIGAR: Objection, your Honor.
THE WITNESS: -- safe-deposit box be closed.
THE COURT: The "they came in": You don't know that.
THE WITNESS: No, your Honor.
THE COURT: That was the objection?
MR. TIGAR: That was the objection.
THE COURT: Just what the record shows is what you

know.

THE WITNESS: Yes, sir.

BY MR. ORENSTEIN:

Q. What does the record show?

A. The box was closed December 13, '94.

Q. At that same day was there another box rented by those same

Peggy Money - Direct

individuals?

A. Yes.

Q. Let me ask you to take a look at Government's Exhibit 1869, please.

Do you have that? I'm sorry. 1869A?

A. Yes.

Q. Do you have that?

A. Yes.

Q. What is that, please.

A. This is a box that was opened December 13 of '94 in the name of Carol Moore and Roger E. Moore, and it's the Box No. A536.

Q. And at which branch?

A. Sebastian Branch No. 583.

Q. So same branch, just a different box was opened the same day the first one was closed?

A. Yes.

MR. ORENSTEIN: Government offers Exhibit 1869A.

MR. TIGAR: No objection, your Honor.

THE COURT: Received.

BY MR. ORENSTEIN:

Q. Ms. Money, in order for a customer to open a new box at the Sebastian branch or any branch, do all of the renters have to be there personally?

A. No, they do not.

Peggy Money - Direct

Q. They can sign on later?

A. One person can open the box and sign a temporary card and take the permanent card back to the joint owner or the other party to sign and bring back in.

Q. Now, how many keys does the bank normally issue in its normal practices when a box is rented out?

A. Normally when it's issued in two parties, it will issue two keys.

Q. And how are those keys packaged, if at all?

A. They normally will put the keys in a little key envelope. They will usually write the box number on it, and it will have

the name of First Union on the little key envelope.

Q. The bank personnel put the box number on the envelope?

A. The bank representative should write the number on the envelope, and they usually also put the size of the box.

Q. Let me ask you to take a look at Government's Exhibit 1871, which you should have up there with you. If you could just take that out of the plastic envelope.

MR. ORENSTEIN: That's already in evidence, I believe, your Honor.

THE COURT: Yes.

THE WITNESS: Okay.

BY MR. ORENSTEIN:

Q. Why don't you just take that out of the plastic envelope so you can take a look at it.

Peggy Money - Direct

What is 1871, please.

A. Okay. 1871 is the actual key, Diebold key, and the key envelope.

Q. Now, first of all, you mentioned Diebold. That's what's stamped into the key itself?

A. Yes.

Q. Is that the manufacturer for the keys that the bank issues?

A. Yes.

Q. And you recognize the envelope that 1871 is with?

A. Yes.

Q. How do you recognize that envelope?

A. That is the key envelopes that are issued when they purchase or request a safe-deposit box, and those are the envelopes that are made just for that purpose.

Q. And is there anything written on that envelope to indicate which box it's for?

A. It has the number 347 and also the size of 3-by-10.

Q. So those are the key and envelope that are associated with the records for that box, 347?

A. Yes.

MR. ORENSTEIN: Thank you, ma'am.

I have nothing further on direct, your Honor.

THE COURT: Mr. Tigar.

CROSS-EXAMINATION

BY MR. TIGAR:

Peggy Money - Cross

Q. Good morning, ma'am.

A. Good morning.

Q. My name is Michael Tigar. I'm one of the lawyers appointed to help Terry Nichols.

I wanted to start by putting up here what's been received as 1871, and that's that key envelope. Right?

A. Yes, sir.

Q. Do you see it says: "For your extra key. Keep in a safe place"?

Do you have two different kinds of envelopes you give

to people; that is, one for the one and one for the extra?

A. That's up to the customer. They could put two keys in one envelope or they could give them two envelopes. It depends on what the customer requests.

Q. All right. So in the normal course of your business, the extra key -- that would be the customer's choice to have an envelope that says that; correct?

A. Yes, sir.

Q. Now, could you take a look, please, at what you have up there at Government's Exhibit 1869 and look at the entry record, if you would, please.

A. The 1869A?

Q. No, just 1869. Not the A but the first one.

A. Okay.

Q. Now, is what I'm showing you here a copy of some cards that

Peggy Money - Cross

are kept in a card file?

A. What you're showing me is the entry record, yes, sir.

Q. I see. Now, on this entry record, we have an initial date of 7-21-94, and then we have some other entries by Carol Moore on through '94. Is that right?

A. Yes.

Q. Now, on the next card, we have 7-21-94 typed in; and does that simply -- that is designed to carry over the record from one card to another?

A. Yes, it was. This indicates that Card No. 1 that's indicated with the 1 in the circle -- that means that Carol Moore actually rented the box and she took the permanent card, which is the 2, back to have the co-owner to sign the card; so that's why you'll see the 1 and the 2. It doesn't normally happen that way. It's only when they have to take the card to get another signature.

Q. I see. So we have Carol Moore alone on the top one, and then we move down and we see Roger Moore has signed on here?

A. Yes.

Q. So that he'd be the co-owner; right?

A. Yes.

Q. Now, do you have any records that show what the relationship is between these two people?

A. No.

Q. Now, these dates down here: These represent the dates and

Peggy Money - Cross

hours upon which the people who signed in accessed the box; is that correct?

A. Yes.

Q. So first we have 7-21, 8-26. With then we have 11-30-94. This is November 30, 1994?

A. Yes.

Q. And the box was not closed out until December 13, 1994. Is that right?

A. Yes.

Q. And these two cards that I've just showed you represent the only entries into that box. Is that right?

A. Yes. Yes, sir.

Q. That is, in order to get in the box, it's just like -- I mean, how long have you been in the banking industry?

A. Well, I've been with this bank 21 years but a total of about 26.

Q. Safe-deposit box works the same in every bank you've ever worked for; right?

A. Yes.

Q. You get one key the bank has, one key the customer has, and the record shows every time somebody goes in. Right?

A. Yes, that's correct.

MR. TIGAR: Thank you very much, ma'am. I appreciate it.

I have nothing further, your Honor.

MR. ORENSTEIN: Nothing, your Honor. The witness is excused.

THE COURT: Agreed?

MR. TIGAR: Yes.

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

Next, please.

MR. MACKEY: Your Honor, we will call ATF Agent Luke Franey.

THE COURT: All right.

THE COURTROOM DEPUTY: Raise your right hand.

(Luke Franey 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: My name is Luke Franey, F-R-A-N-E-Y.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Proceed.

MS. WILKINSON: Thank you.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Agent Franey.

A. Good morning.

Q. Could you tell the jury which agency you're associated with.

A. Yes. I'm employed by United States Treasury Department

Luke Franey - Direct
within the Bureau of Alcohol, Tobacco and Firearms.

Q. Commonly referred to as the ATF?

A. That's correct.

Q. Are you a special agent with ATF?

A. Yes, I am.

Q. How long have you been so?

A. Since July 5 of 1988.

Q. Did you go to college?

A. Yes, I did.

Q. Where did you go?

A. I attended Sam Houston State University in Huntsville, Texas, graduating in 1986 with a bachelor's degree in criminal

justice.

Q. What did you do after you left college?

A. I worked a short time for the Port Aransas Police Department.

Q. Where is that?

A. In Port Aransas, Texas, down by Corpus Christi.

Q. Then what did you do?

A. I was then employed by the U.S. Department of Health and Human Services, in their Office of Inspector General, which is their investigative arm.

And then -- excuse me -- in 1988, I was hired by ATF out of the Dallas field division.

Q. Can you tell the jury what you do as an agent with the ATF.

Luke Franey - Direct

What's -- what are your duties and responsibilities?

A. My job as an ATF agent in the Oklahoma City field office is to investigate violations of the firearms, explosive -- also the alcohol and tobacco violations as well -- in the western half of the -- western half of Oklahoma.

Q. You mentioned Oklahoma City. Is that where you're currently assigned?

A. That is correct.

Q. Were you assigned there in April of 1995?

A. Yes, ma'am.

Q. And can you tell the jury where the offices of the ATF are located on April 19, 1995.

A. Our office was located in the Murrah Building at 200 N.W. 5th Street in downtown Oklahoma City.

Q. On which floor did you have your ATF offices?

A. We were on the ninth floor.

Q. Could you take a look at your screen at Government's Exhibit 853 which has not yet been introduced into evidence. Do you recognize that photograph?

A. Yes, I do.

Q. What does that depict?

A. That is a picture of the Murrah Building in downtown Oklahoma City prior to April 19 of 1995.

MS. WILKINSON: Your Honor, we offer 853.

MR. WOODS: No objection, your Honor.

Luke Franey - Direct

THE COURT: Received, 853.

BY MS. WILKINSON:

Q. Agent Franey, can you tell the jury what they're looking at here, please.

A. That is a view from the northwest looking at the Murrah Building. 5th Street would be the street that is running directly in front underneath the glass side there.

Q. And that glass side is the north side of the building; is that right?

A. That's correct.

Q. Now -- we'll get to the diagram, but where were the ATF

offices? Were they on the glass side or others of the building?

A. There were actually two ATF offices on the ninth floor of the Murrah Building. The law enforcement office was on the southeast corner, which would be the opposite side of the glass; but we also had a compliance and licensing office which would have been on the northwest corner of the building.

Q. Okay. Let's look at 952, the floor plan for the ninth floor. Do you recognize that?

A. Yes, I do.

Q. Could you take your pen. And let's start with the small office there at the front, which I assume is the office that you just described that abuts the windows. Is that right?

A. Down right here.

Luke Franey - Direct

Q. Down there in the right-hand corner of the diagram?

A. Yes. This area right here is the ATF compliance office.

Q. What does the ATF compliance office do?

A. ATF compliance is the -- is the branch of our agency that handles the licensing and compliance for alcohol, tobacco, firearms, and explosive dealers.

Q. How many employees worked in that office in April of 1995?

A. There were three employees.

Q. Now, could you move over to the left and tell us about the other ATF offices there.

A. This area over here, which is on the southeast corner of the ninth floor, was the ATF law enforcement office.

If you would come off of the elevators down here, which is the way we came up, proceed eastbound down the hallway, coming down here to the entryway to our office.

Q. And whose office would you see as you walked in there?

A. Actually, this first area in here as you come into here -- I'm a little bit off with my pen here, but right into there is our -- was basically the greeting area.

Directly through here was the office that was actually an open-bay area that seated our secretary and office manager, Valerie Rowden.

Q. And could you continue on. Who would you see next if you walked through the office?

A. If you walked through the office, this office here was our

Luke Franey - Direct

supervisor's office, Alex McCauley. This office in here was a coffee room and a fingerprinting room. We kept supplies and whatnot in there.

As you would continue down the hall eastbound, this was a conference room over here which just had a big conference table in it.

This office right here would have been Special Agent Donald Gillispie's office.

Continuing down the next office on the south side of the building would have been Special Agent Mark Michalic and

Special Agent Harry Eberhardt's office.

Directly across from them in this area here was Special Agent Darrell Edwards' office.

Continuing down the hall eastbound, this last office down here actually held three: Special Agent Delbert Canopp, Special Agent Karen Simpson, and Special Agent Tim Kelly.

Directly across from their office was my office.

Q. Now, tell us what's there in that last area that abuts the wall.

A. The last area here is our evidence vault, this area here; and this right here is our -- is the outside storage area, outer vault, and also our computer -- our LAN system.

Q. Now, on this diagram we see that DEA and Secret Service also had offices with the ATF on the ninth floor. Is that right?

Luke Franey - Direct

A. That's correct.

Q. Did you know some of the people who worked in the DEA office and the Secret Service office?

A. That is correct.

Q. How did that come about?

A. Well, in Oklahoma City, all the federal law enforcement agencies are rather small. Most of them are outposts for their agencies. We all worked on the ninth floor. Customs office was down below us several floors; but we all worked together on a daily basis. We socialized together, holiday parties and whatnot.

Q. Did you work on investigations at times together?

A. Yes, we did.

Q. Did you get to know the staff of the DEA that was there depicted on the ninth floor?

A. That's correct.

Q. Did you get to know the Secret Service staff that had offices on the ninth floor?

A. Yes, ma'am.

Q. Agent Franey, let's turn to April 18, 1995, if we could. Tell the jury what you and your fellow agents were doing on the evening of April 18.

A. On the evening of April 18, 1995, myself and other agents in the office were involved in an investigation with the Norman Police Department on an individual who was a convicted felon

Luke Franey - Direct

that was involved in possession, sale, and transfer of machine guns and narcotics.

We worked late into the evening of the 18th, actually into the morning of the 19th till about 1:30 in the morning. At that time, my supervisor, Alex McCauley, advised me, "We've got enough evidence against this individual. You need to go ahead and prepare an arrest warrant for him."

So early that morning, or late in the evening the 18th or the 19th, I was under orders from my supervisor to prepare

an arrest warrant for Mr. Wolf. So I got home about 1:30 in the morning on the 19th, got up early, and arrived at work on the morning of the 19th about 7:30 a.m.

Q. You said you were working on an investigation in Norman, Oklahoma. Could you tell the jury how far Norman is from downtown Oklahoma City.

A. Norman is approximately 15 miles south of Oklahoma City.

Q. When you got into the office that morning, your purpose was to draft this arrest warrant. Is that right?

A. That's correct.

Q. Were there other people in the office that morning?

A. There were that came in after myself.

Q. Who else did you see that morning?

A. Actually, the first person that came in after me was our office manager/secretary, Valerie Rowden. I never actually saw her that morning till after the bombing. I heard her. She was

Luke Franey - Direct

actually surprised that someone was there before her. She's usually there at 8:00; and we work such crazy hours, we're usually not there at 8:00 in the morning. So when she came in, she hollered back who was there. I said it was me, and she started laughing that I was there that early.

But after her, my supervisor, Alex McCauley, came to work and then Special Agent Harry Eberhardt; and I saw both of them --

Q. Go ahead.

A. -- Eberhardt and McCauley in the office.

Q. Did you have a discussion with Agent Eberhardt that morning before 9 a.m.?

A. Yes, I did.

Q. Did he leave the building?

A. Yeah. He came into my office and said that he was going back over to Federal Courthouse, which was just south of the Murrah Building. He was waiting for a jury to come back on an arson trial. He advised me that he was going to stop at the credit union on the way out to pick up some money and then head over and wait on his jury.

Q. I want to show you a diagram here. Hold on one second. This is Government's Exhibit 949, which I believe is already in evidence.

Take your pen, and there in the middle is the Murrah Building. Is that right?

Luke Franey - Direct

A. That's correct.

Q. You said that Agent Eberhardt was on his way to the Federal Courthouse?

A. Yes, ma'am.

Q. Can you show the jury how close the Federal Courthouse is to the Murrah Building, please.

A. This would be the Federal Courthouse here. It is directly south of the Murrah Building location. There was a plaza area

out through the back of the building and directly across the street. I would say no more than a hundred yards.

Q. If you came down those elevators you were pointing out to us earlier and walked right across the plaza, could you go right across there? Is there anything blocking that entry to the Federal Courthouse?

A. No, there is not; and actually the way we usually went is -- there was a common parking lot underground between Murrah Building and the Federal Courthouse, so most of the time we would go down -- take the elevators down to the basement and then walk across and come up from the basement of the courthouse.

Q. Now, let's return to the morning of April 19. You said you spoke to Agent Eberhardt and he left. Do you recall what you were doing around 9 a.m. that morning?

A. Yes, I do.

Q. What were you doing?

Luke Franey - Direct

A. I was talking on the telephone to another agent in our office, Agent Darrell Edwards. He's one of my partners at work. We work a lot of cases together. He had worked with me late the night before.

Q. Do you know where he was when you were talking to him?

A. Yes, ma'am, I do.

Q. Where was he?

A. He was at his residence.

He is -- was shot in the line of duty several years ago, and he has problems with his neck; and a lot of times he needs to -- you know, he stays home and lays on ice packs, especially if we're working late at night, sitting in cars and things. It hurts him. So I called him right about 9:00 and asked him where he was, kind of teasing him; and he said he was laying on ice packs. And I said, Well, you need to come on in because if I obtain this warrant, we're going to have to go arrest Mr. Wolf.

Q. What happened next?

A. Sometime during that conversation with Agent Edwards, I heard a loud explosion, a loud noise. I heard the girls in the DEA office. My desk actually abutted up to a common wall with DEA there. I heard them scream. I heard a loud roaring noise, and then my office started coming apart.

Q. Did you recognize some of those voices of the women over in DEA?

Luke Franey - Direct

A. I did prior to the explosion. You know, I heard Carol right across the way from me. She has a very distinctive voice, and she was laughing and joking; and I couldn't hear exactly what they were joking about, but just normal early-in-the-morning cutting-up, you know, hollering back and forth.

Q. What happened to you during the explosion, Agent Franey?

A. First thing I remember is sitting at my desk hearing the

explosion, hearing the screams and hearing the roar sounding like a locomotive coming through the building. It startled me. I had no idea it was. I remember looking up and seeing the ceiling and the light fixture falling and throwing up my arm to try to block that. And the next thing I remember is just getting hit with -- I assume the blast pressure, loud -- or very strong burst of wind.

And I remember pushing back from the desk; and the next thing I remember is being on the floor, kind of halfway in the hallway and halfway in the office opposite from the south side from my office.

Q. Do you have any idea whether you were unconscious for any period of time?

A. You know, I believe I was. I don't know for sure. The reason -- you know, I have talked to our secretary, Valerie, who was in the office as well when the explosion occurred; and she was on the opposite side of the office. And after the explosion, she said she screamed and screamed for me to come

Luke Franey - Direct

get her. She was scared, wanted me to help her out of the office; and I don't remember any of that. I don't remember anything hearing for a while. You know, once I come to, or I realized that I'm on the floor, I started yelling to her and got no response.

Now, she was already able to get herself out of the building and down on the floor (sic) before I even remember anybody calling.

Q. What did you do when you got yourself up off the floor?

A. The first thing I did is just look around. I mean, I couldn't -- I didn't know what had happened. I was confused. I think I was dazed. I -- first thing that I can remember is getting up trying to get out of the building. I was able to stand up; and as I was turning to go down the hallway opposite the way I do when I was coming in, I could go just a short distance and then the floor was sheared off, down, from, I guess, the explosion. You could see all the way down to the pile of rubble down there.

Q. I take it, then, you couldn't walk in that direction and get out of the building?

A. No, ma'am, I could not.

Q. What else did you see?

A. I was looking around at that point. I could see out of the front of the building where the front part of the building used to be. I could see across into the parking lot across the

Luke Franey - Direct

street. I distinctly remember a huge wall of flame, orange flame shooting out of the Athenian Building. I remember big clouds of black smoke pouring into the building, hearing car alarms going off, hearing -- seeing cars on fire in the parking lot.

Q. Now, you said you saw a fire coming out of the Athenian.

Can you look at Government's Exhibit 973. Do you recognize that?

A. Yes, I do.

Q. Does that depict what you've just described?

A. It looks very similar. Obviously, at that time my view was nine stories up. I believe that photograph is from a street level, but that is very similar.

MS. WILKINSON: Your Honor, we'd offer 973.

MR. WOODS: No objection, your Honor.

THE COURT: Received, 973.

BY MS. WILKINSON:

Q. Agent Franey, tell the jury -- the jurors what building they're looking at that's back there in the back of this photograph.

A. That, I believe, is the Athenian Building, the Water Resources building; and then the other building in the far background, I believe, is the apartment building that was northeast -- or northwest of the --

Q. Is that the Regency Towers?

Luke Franey - Direct

A. Yes, it is.

Q. Now, here in the front there is a fire. That is what you're talking about near the area of the Athenian Building?

A. That was in the general area where I saw it. At the time that I saw it, it was much larger.

Q. Did you see cars on fire in the parking lot at that time?

A. Yes, I did.

Q. Did you see any firefighters or rescue workers attempting to put out those fires at that time?

A. Not at that time, no, I did not.

Q. Now, what did you do after you looked out and saw this scene?

A. I was actually kind of confused at that time. I had -- I didn't know what had happened. Obviously, something terrible. I mean, I didn't know whether it was a natural-gas explosion, or a bombing, or what. I had no idea.

At that point, I started looking around the office to see what was left, and I mean it just looked like -- you know, like a tornado or something had come through there. The ceiling was gone, the walls were gone, everything was hanging down. Things were blown all over. Just, you couldn't even really recognize it.

I remember thinking I need to get on the radio. We need help. Obviously, I could hear people screaming and crying for help and whatnot.

Luke Franey - Direct

I remember seeing one of our handheld radios that we use when we're in the field. And I picked it up and turned it on to the car-to-car frequency, meaning that you have a repeater that you can use that's usually on top of the building or somewhere, and you can reach for long distances; but with

the handheld radio, they were very limited in their distance. And I turned that on to the car-to-car frequency and started calling for help on the radio.

Q. Did anyone respond?

A. Yes, they did.

Q. Who responded to you?

A. Agent Michalic. He was at the point where he was a little bit far out where we couldn't get very good communications. I could hear him sometimes and he could hear me sometimes, but we couldn't have a steady conversation; and I just remember saying, "You guys need to get in here. There has been an explosion at the building. There is people hurt."

And other agents started coming on the air saying what was wrong, what's going on. And I was trying to explain to them the situation, tell them they needed to come downtown.

Q. At some point, did you find a tape recorder?

A. Yes, I did.

Q. What did you do with that?

A. Throughout the morning there, the time that I was in the building, I had done several different things; and I remember

Luke Franey - Direct

finding the tape recorder there in the rubble. And I remember back to the academy when they said that if you're conducting a post-blast investigation, when you're interviewing witnesses, it's very important if you can determine what color flame or what color smoke was seen after the explosion.

And I don't know why I thought of that. I have no idea. They say you revert to your training sometimes in stressful situations. I just remember that, and I picked that up and started documenting those things and to the best of my recollection what happened that morning at times and what I was doing and what I saw.

Q. Were you totally calm and able to do that in the best way possible at that point?

A. I guess, you know, at the time I -- it just seemed crazy. I felt like I was in a daze, felt like I had been in a boxing match, really not sure what's going on. When I listened to it later, it is kind of eerie, you know.

Q. At some point did you attempt to look out the back windows of the south side of the Murrah Building?

A. That was the area that I could actually get around to fairly easily. I had view out of the southeast corner of the building. You know, I kind of had a little island of area there of about three offices. Agent Eberhardt and Michalic's -- the big office that had the three agents in it and then my office and a little bit of Agent Edwards' office

Luke Franey - Direct

there, so about three-and-a-half offices I could get around in.

But the farther you got out to the front of the building, the floor would shake; and from talking on the radio to the agents, they're saying, "Stay away from that area."

Q. Could you get into the evidence room?

A. Yes, I did. At one time I did get in there, because I remember hearing the girls from DEA screaming. I was thinking about that. At that time, I had no idea how bad it was. And I remember, well, maybe I can get over there. If they're still there, I can help them. They might need help.

So I went to our outer evidence vault and climbed over the cage in through the ceiling. You know, the ceiling was broken. There were pipes hanging down; so I was able to grab onto a pipe and come over the top into the evidence vault.

I went to the back of our evidence vault, the back wall, which was another common wall with DEA; and I kicked the shelves down and kicked a hole into the DEA office through the wall, what was left of the DEA office. When I got over there, I was really surprised that the whole front, the whole office basically or the majority of the DEA office was just gone, and --

Q. Did you find the ladies who were screaming?

A. No. No. You know, I looked around and I looked under what rubble there was and called out verbally to try to get a response. And I think at that point right there is when it

Luke Franey - Direct

really hit that he -- that they weren't there; that they were probably down in the rubble pile.

Q. I take it, then, you couldn't get out of the building going forward, either?

A. No, no. I was really -- I just -- in a small area back there that I was able to move around fairly freely in, but it was -- I couldn't get westbound into the other part of the building because the floor was gone. There was a big crevice, and there wasn't much on the front part of the building to go to.

Q. Tell the jury what you did when you went back to the windows.

A. I went back to the windows; and I was able to see, you know -- By that time, you know, A lot of people were coming to the building to help. There were a lot of people from the downtown area. The local police and fire department were coming up, and I could see our agents were starting to arrive on the scene. I could see other agents from DEA that were coming in, and people from the courthouse had come out; and quite a few people in the back there. And I was able to yell back and forth, have a conversation with those -- with those people.

When Agent Michalic arrived on the scene and came up, I found another one of our handheld radios and threw it down to the ground there; and it actually worked after it hit. The

Luke Franey - Direct

battery came off and he put it back together. It actually still functioned so we could communicate without yelling. And Agent Michalic -- they were trying to come up with a plan to

get me out. I was telling them, "I really can't go anywhere. I think I'm okay right now. The floor seems to be fine."

They were advising me to stay back toward the south wall because the front was flexing and it was dangerous, and they were afraid that might fall; so I kind of stayed back in that area. But I did have open communication with them for a while.

Q. Let me show you Government's Exhibit 1012, which is already in evidence. Is this the back of the building that you're describing?

A. That's correct.

Q. Can you tell the jury with your -- or show the jury with that pen where you were that morning when you were looking out the window?

A. It would be this area here.

MS. WILKINSON: Excuse me, Agent Franey.

I think I'm wrong; that 1012 is not into evidence. I apologize.

BY MS. WILKINSON:

Q. Is this the back side of the building after the explosion in the Murrah Building, Agent Franey?

A. That's correct.

Luke Franey - Direct

MS. WILKINSON: Your Honor, we'd offer 1012.

MR. WOODS: No objection.

THE COURT: Received. Now you may use it.

MS. WILKINSON: Thank you.

BY MS. WILKINSON:

Q. Sorry about that, Agent Franey.

Now they can see it, so why don't you show them where you were that morning.

A. This would be our office floor right here, the ninth floor.

Let me get my drawing down here.

This would be the back office that had the three agents working out of it, Canopp, Simpson and Kelly. And I was able to get around in this office and also this office here, which was Agent Michalic's and Eberhardt's. So I was looking out of those two offices down to the bottom there.

Q. Before coming to court today, did you see a photograph of yourself up on the ninth floor in the windows you've just pointed out for the jury?

A. I have seen it before.

Q. Let me show you Government's Exhibit 976, which is not yet in evidence. Does that show you, Agent Franey?

A. Yes, ma'am, it does.

Q. What are you wearing?

A. I'm wearing an ATF raid jacket, and I actually have on an arson-scene helmet, safety helmet that was in our outer vault

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area. That's where we store a lot of our excess equipment.

MS. WILKINSON: Government offers 976.

MR. WOODS: No objection, your Honor.

THE COURT: Received, may be shown.

BY MS. WILKINSON:

Q. Agent Franey, did you find that raid jacket and the helmet that you're wearing after the explosion?

A. Yes, I did. I had -- during the explosion, some of the fiberglass, I assume from the roof panels, was blown into my forearms and my face; and I was itching like crazy, and I was actually cold. I don't know if that was just shock or what. But I was going back through there on my way over to DEA office, and I saw the raid jacket there; so I put that on. And I found a helmet there. There is all the pipes and concrete and stuff hanging down. I just slapped that on in case I popped myself in the head.

Q. On the right of this photo, there is a white sign in the window. Do you see that?

A. Yes, ma'am.

Q. Do you know what that sign said?

A. Yes, I do.

Q. What did it say?

A. It said, "ATF trapped, ninth floor."

Q. Did you make that sign?

A. Yes, I did.

Luke Franey - Direct

Q. Did you put it up there to ask for help?

A. Yes, I did. In the time after the bombing, I found -- it was a piece of evidence from a former trial; and I found a Magic Marker -- found that and wrote, "ATF trapped, ninth floor," and stuck it there in the window shortly after the explosion.

Q. At some point when you were standing in the window talking to Agent Michalic, did he inform you about a bomb scare?

A. Actually, I wasn't talking to him at that time. I was rummaging around the office, and I heard a loud -- or a series

of loud screams, you know; and it scared me, so then I ran to the window. And I could see everybody that was out on the back plaza area there was running away from the building. And I obviously knew that was not something positive at that point.

So I got on the radio, and I'm calling to Agent Michalic, you know, "Where are you going? Where are you going?" I was watching him run away from the building. And finally he says -- he advised me that they had -- they thought they found another bomb.

Q. How did you feel?

A. Probably about as bad as a person could feel at that time. You know, they train you in law enforcement to respond to certain situations, a man with a gun, an arrest, whatever. You're able -- there is an adversary, and you're trained to react to it. And on a deal like that, I knew I was trapped, or

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at least I thought I was. I had my little piece of real estate up there; and when they told me there was another bomb, it's just a terrible feeling. It feels like your heart stops, your stomach is turning inside out, because I didn't feel there was anything I could do at that point.

Q. What did you do?

A. First thing I did, I kneeled down and said a prayer; and, you know, your mind is racing. You don't know what you're going to do; and the next thing I remember is just -- I had my briefcase and that metal box, all that stuff there. I just threw that to the side; and if I could, I'd rather -- I'd rather die falling off that thing than go through another blast.

Q. So what did you do?

A. I got up as close as I could to the south wall and got up next to the wall and started kicking holes in the wall, trying to get as close as I could to that outside edge. That south edge was the only way I could get out of there, and I realized that.

I just started kicking through one wall and climbed along the ledge to another wall and kicked through that wall and just held on to the window frames there. And there is a small radiator right along the edge of that wall there. And kind of -- sometimes with one foot in and one foot out on the ledge, sometimes with both foot (sic) out on the ledge, just

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kind of made my way across there, you know, as fast as I could. I kept thinking in my mind that one bomb just went off, I assumed, they said and another one might be going off; so I just thought it was a race against the clock.

And I remember getting across and just hitting the big rubble pile on the other side and climbing over it. I remember, you know, from fire drills and whatnot where the stairway was and made my way to the stairwell there, and it was open and passable; and I remember grabbing on to that rail and running down those stairs. And, you know, the rail -- the rail was covered in blood and the floor was covered in blood from -- I assume people made it out prior to me getting out, and just running down there and finally made it down to the plaza area and came out. And by the time I came out, people were already coming back up to the building, and Agent Michalic and Edwards were looking up at the ninth floor like "I wonder where he's at," and I walked up behind them.

Q. At that time, you learned that the bomb scare was just that?

A. Yes.

Q. Now, were there other employees from ATF that were injured in the bombing that day?

A. Yes, there were.

Q. Who was that?

A. Our secretary or office manager, Valerie Rowden, who was

Luke Franey - Direct

actually in the law enforcement office with me. Then there were two compliance officers that were in our compliance/licensing office on the northwest side of the federal building. Their office was right between the Secret Service office and the DEA Task Force office. And our two compliance officers were the ones that were hurt most severely out of the ATF employees.

Q. Out of your entire ATF office, were there employees there who had served at Waco?

A. Yes, there were.

Q. How many?

A. There were actually two warrants -- or two agents that were there during the execution of the warrant, and then we had four other agents in that office that responded the day after the warrants and stayed down there until late April.

Q. Did you serve at Waco, Agent Franey?

A. Yes, I did.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Mr. Woods?

MR. WOODS: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. WOODS:

Q. Good morning, Agent Franey.

A. Good morning.

Q. My name is Ron Woods. I'm one of the lawyers that was

Luke Franey - Cross

appointed to help Terry Nichols in this case. You and I have never met. Is that correct?

A. Yes, sir.

Q. You've been in the ATF since '88?

A. That's correct.

Q. And you graduated from college in Huntsville, Sam Houston State?

A. Yes, sir.

Q. Were you from that office?

A. I'm from Houston.

Q. Okay. And your first job out of Sam Houston State, you went with Port Aransas?

A. Yes, sir.

Q. The PD there?

A. That's correct.

Q. That's a small community on the bay there at Corpus Christi?

A. That's correct.

Q. And it's got a big drug problem. Did you work drugs there?

A. No, sir. I was just strictly uniformed officer.

Q. And how long did you stay with that PD before you joined the Health and Human Services Inspector General's office?

A. Just a short time. I started off as a -- college internship office through the criminal justice college there at Sam Houston, stayed there briefly, and then went to the

Luke Franey - Cross

Department of Health and Human Services in 1987.

Q. Okay. And did you have to sign a commitment with them to stay for three years if you joined their Inspector General's office?

A. No, I did not.

Q. Okay. And how long did you stay with them, then?

A. I stayed with HHS, with the Inspector General's office, from May of 1987 to July of 1988.

Q. Okay. A little over a year?

A. Yes, sir.

Q. And what kind of work did you do with HHS?

A. HHS investigates violations of the Medicare fraud and also Social Security fraud, so we worked Social Security fraud, people using fake Social Security numbers, and then also Medicare fraud.

Q. Okay. And you joined ATF in the Dallas office?

A. The Dallas field division, which is where the Oklahoma City field office is part of.

Q. Okay. And you joined them in '88; is that correct?

A. July.

Q. I'm sorry?

A. July of 1988.

Q. And have you been in the Oklahoma City office the whole time since July, '88, assigned there?

A. Yes, sir.

Luke Franey - Cross

Q. Okay. Now, you mentioned the compliance office was on the north side of the building; is that correct?

A. That's correct.

Q. And for the jury, the ATF compliance office: Was one of their duties to make sure that gun dealers are complying with the registration requirements, the ATF registration requirements?

A. That would be correct.

Q. Would you briefly describe for the jury what manufacturers of guns are required to file with ATF and then what the subsequent dealers are required to file with ATF concerning firearms and serial numbers?

A. Well, the Gun Control Act of 1968 -- in that law that's passed -- requires all gun manufacturers to serialize their firearms. And they actually have to be registered with ATF to manufacture as a manufacturer of firearms.

And then as a licensed dealer -- you also have to be registered by ATF to be a licensed dealer of firearms.

Q. So when the manufacturer manufactures a weapon, a serial number is placed on that weapon that's unique to that weapon; is that correct?

A. That's correct.

Q. And that's registered with ATF?

A. No, sir, it's not actually registered to ATF by the serial number.

Luke Franey - Cross

The manufacturers keep those serial numbers there.

Q. All right. And then when it's given to the first retail distributor, such as, say, Gart Brothers here in town, are they required to keep records of any receipt of the gun and then the sale of the gun by the serial number?

A. That's correct. A federal firearms dealer is required by law to keep ATF form 4473's or what's commonly known as a yellow sheet. If an individual comes in to buy a firearm, they're required to fill out the ATF Form 4473, and then that is kept on premise. The firearms dealer is required to keep that.

Q. All right. And part -- excuse me -- the ATF jurisdiction and your authority is you can trace weapons from their manufacturer through the various firearms dealers, through their serial number and through your records. Correct?

A. Yes, we can.

Q. Okay. Fine.

Now, you mentioned that you picked up a radio so that you could communicate with the other agents, some who were coming to the building; is that correct? Agent Michalic was one who was in route to the building?

A. That's correct.

Q. And there was one agent who went over to the courthouse. Is that correct?

A. There were actually one agent had been to our office that

Luke Franey - Cross

morning that was on his way to the courthouse. We actually had another agent at the courthouse as well.

Q. All right. And were you the only agent then that was left in the office at 9:00?

A. Actually, we had our supervisor, Alex McCauley. At the time of the bombing, I assumed he was in the office because he was there just prior to it with me just talking to him. What I had learned afterwards was that he had actually left the office and was in the elevator on the way down.

Q. Okay. You also said that you found a tape recorder and because of your training you picked it up and dictated into it what you observed?

A. That's correct.

Q. And tape recorders are pretty available in all law enforcement agencies, aren't they? At least in your agency you've experienced the use of tape recorders, have you not?

A. Yes, sir, I have.

Q. And they're somewhat inexpensive and readily obtainable; is that correct?

A. That's correct.

Q. And as I understand, the reason you did that because you wanted to collect or get on tape what you saw, heard, and observed. Is that correct?

A. That's correct.

Q. And is that the best way you know as a law enforcement

Luke Franey - Cross

officer to preserve what someone is saying and what someone is seeing and hearing?

A. That's one way. There is many ways to do that, but that at the time -- that was the best available to me.

Q. Okay. And I assume from what you've said that when you heard that again, you can certainly see and hear -- not see, but -- but you can hear the emotion in your voice at that time. Is that correct?

A. Yes, sir.

Q. It's a situation you'll never forget, will you?

A. That's a fact.

Q. Now, on that second bomb scare, did you ever come to learn what it was that someone saw that led to that scare?

MS. WILKINSON: Objection, your Honor, as to what he learned about what someone else saw.

THE COURT: Sustained.

MR. WOODS: Okay.

BY MR. WOODS:

Q. Did you know at that time what anyone had observed that led to the bomb scare?

A. At that time, I did not.

Q. All right. What exactly do you all keep in your evidence room, in your storage locker? You seize items during the course of an investigation of cases, and your jurisdiction is firearms and explosives; is that correct?

Luke Franey - Cross

A. Yes, sir, as well as potentially alcohol or tobacco.

Q. Sure.

A. Arson debris, documents, things like that.

Q. Sure. You don't keep explosives, I assume, there in that building, do you?

A. No, sir, we do not.

Q. You have a secure locker out wherever, the firearms range, or somewhere in Oklahoma City?

A. We have an explosive evidence storage bunker that we share with the Oklahoma City Police Department, the highway patrol, and the FBI; and that is kept at the Oklahoma City explosive range, which is right by the firearms range.

Q. Okay. So what type of items did you have, then, in your storage locker? I assume anything that the explosive was inert, if you had any explosive; is that correct?

A. That's correct.

Q. What did you have in your storage locker that you're aware of?

A. In our evidence locker at that time, like we would on just about any other day -- we would have various firearms that were either retained, seized, or purchased in an undercover capacity during an investigation, which would include rifles, shotguns, machine guns.

We would also have documents that we maybe obtained

during a search warrant or that we've purchased or retained.

Luke Franey - Cross

There could be various types of ammunition, you know, in the office; and then also electronic surveillance evidence, being tapes and maybe, you know, audiotapes, maybe videotapes.

Q. Do you know whether or not some item in your evidence locker was mistaken by someone to be the second bomb scare?

MS. WILKINSON: Objection, your Honor, unless --

MR. WOODS: If he knows of his own personal knowledge, your Honor.

THE COURT: Yes. As opposed to someone telling you that.

THE WITNESS: No, sir, I do not know.

BY MR. WOODS:

Q. Okay. Now, have you been to other ATF agents (sic) across the state, in Texas or Oklahoma, or have you only been to the Oklahoma City office?

A. No, sir, I've been to many ATF offices.

Q. Have you been to the big one in Houston?

A. Yes, sir, I have.

Q. Have you seen these mock bombs that some agents have, you know, with the -- they're not real. They're imitation. They have the dynamite sticks and the wires coming out and the alarm clock on them, sort of a novelty device?

A. Yes, sir, I have.

Q. Okay. Do you know whether or not any agents in your office or anywhere in the office had one of those on their desk?

Luke Franey - Cross

A. I believe Special Agent Harry Eberhardt had a clock like that in his office.

Q. Okay. Okay. And it's certainly not armed, and it's not a real device at all; is that correct?

A. No, sir. It's just empty cardboard tubes that I believe are painted red, and it has an LED readout clock on it. I think it's manufactured as a novelty item. It's made to look like a dynamite bomb, but it's actually just cardboard tubes with a clock on it.

Q. Okay. And do you know if that was found after the bombing?

A. I'm not sure if it was or not.

Q. Okay. Now, you told the prosecutor that you observed across the street the cars that were on fire in that parking lot.

A. Yes, sir.

Q. Where did you park? Were you driving a Bureau car, or did you have a personal car that day?

A. No, sir, I was driving an ATF-issued vehicle.

Q. Were you all allowed to park inside the building there in the basement?

A. Yes, sir. Our parking garage -- ATF has dedicated spaces that were on Level C underground in the parking garage.

Q. Okay. So you didn't have any vehicle across the street in

the parking lot?

A. No, sir, I did not.

Luke Franey - Cross

Q. You mentioned to the prosecutor that at that time, you didn't see the fire trucks putting out the fire. After you got down on the ground and were conversing with Mr. Michalic, did you leave and go to the hospital for any treatment or anything?

A. When I first got out of the building after I talked to Agent Michalic and Edwards, one of the U.S. marshals grabbed me and took me to the triage unit there that they had set up; and they had bandaged the cuts on my head and my hands, small, minor wounds. And then at that point, we stayed there at the federal building.

Q. Okay. Did you go around to the front part, the other side from where you were during that morning?

A. Yes, sir, I did.

Q. What did you observe in that parking lot during the morning hours before noon?

A. I can't really recall specific items. I just remember seeing a lot of devastation, a lot of cars that were just crunched and burned; and to the best of my recollection, by the time I got around, I think most of the cars were out because this -- I don't believe I got out of the building for an hour and a half after the explosion. And by the time I went through the triage unit and went -- we walked around the front of the building would have probably been maybe two to three hours.

Q. Okay. Could you tell how the fires were put out, with either water, or foam?

Luke Franey - Cross

A. No, sir, I have no idea.

Q. Okay. Just from what you had seen when you got there and noticed the scene?

A. No. No, sir, I can't recall.

Q. Okay. Okay. Now, after this shocking event, did you participate as an agent from that time on, or were you -- did you take time off, or what did you do from that moment for the next week?

A. Always an agent. You know, when I came out of that that day, I knew that we had things to do; and I mean we went to work, but I was not involved in the investigation, you know, as far as actual being on a search team, looking for evidence and those things.

We went out and I met with Agent Eberhardt shortly after I got out of the there; and he said, "Hey, our national response teams are going to come in. There is things we've got to do. We have to set up command posts, try to get -- logistically set things up." So I helped for that aspect in that day into the night, till about 10 or 11 at night.

Q. Did you go the command post that was set up with the Treasury people, Customs and Secret Service? Did -- You all set up a joint command post, didn't you, initially?

A. There was one set up, sir, but that was out at the Customs Air Wing, and I wasn't out there till sometime weeks later.

Q. Okay. Okay. That's -- were you there on the scene like

Luke Franey - Cross

Friday and Saturday after the Wednesday bombing?

A. Yes, sir, I was.

Q. What day was it that ATF brought a Ryder truck to the scene that had a mock bomb inside of it?

A. I have no idea.

Q. Did you ever see one present at the scene?

A. A mock bomb?

Q. No, sir. A Ryder truck that had the barrels and ammonium nitrate inside of it.

A. I recall seeing a Ryder truck, but I don't recall ever seeing ammonium nitrate or a mock bomb.

Q. Okay. You didn't participate in that aspect of bringing one to the scene so the agents could see what it would look like?

A. No, sir.

MR. WOODS: Okay. Thank you very much, Agent Franey.

THE WITNESS: Yes, sir.

MS. WILKINSON: Just briefly, your Honor.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Agent Franey, Mr. Woods asked you about the paperwork that ATF keeps or that manufacturers or dealers keep when they sell firearms. Do you recall that?

A. Yes, I do.

Q. And you said that sometimes you can trace weapons by

Luke Franey - Redirect

following that paperwork; is that true?

A. Sometimes you can.

Q. Tell us what some of the problems are when you try and do that.

A. Well, it's very difficult. There are a lot of problems involved in a firearms trace. If you have a very recent manufactured weapon, sometimes it is easy to get a trace. But usually if the gun is manufactured over five years ago, they don't even attempt to trace them because the success on those traces is very limited.

Some of the major manufacturers, Smith & Wesson, Colt, keep very good records. A lot of manufacturers do not. As -- The older a gun is, the more times it has changed hands; and the only thing that's recorded is that first sale from the dealer, a 4473, unless it's sold to another dealer where they're required to keep paperwork and another dealer. But usually once it goes past that first sale and it goes into the hands of a person who then trades it or sells it where there is no paperwork required, so . . .

Q. So every time someone sells a firearm -- let's use some of these long rifles for example -- they don't have to keep

paperwork and register with the ATF, do they?

A. No, ma'am, not unless you're a licensed firearm dealer.

Q. So if someone went to a gun show and took some long rifles and sold them to some of the customers at the gun show, they

Luke Franey - Redirect

wouldn't be required to keep any paperwork, would they?

A. No, ma'am, they would not.

Q. And if that happened on one occasion or several occasions, you could not trace the ownership of that firearm, could you?

A. It makes it very difficult.

MS. WILKINSON: No further questions, your Honor.

THE COURT: Any follow-up?

MR. WOODS: No further questions.

THE COURT: All right. Is the agent excused?

MS. WILKINSON: He is, your Honor.

MR. WOODS: Yes, your Honor.

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

Next?

MR. MACKEY: Your Honor, at this time, we'd call Karen Anderson.

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

(Karen Anderson 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: Karen Anderson, A-N-D-E-R-S-O-N.

THE COURTROOM DEPUTY: Thank you.

MS. WILKINSON: Thank you, your Honor.

DIRECT EXAMINATION

Karen Anderson - Direct

BY MS. WILKINSON:

Q. Good morning, Ms. Anderson. How are you doing?

A. Good morning.

Q. Could you tell the jury where you live.

A. Hot Springs, Arkansas.

Q. And where specifically do you live?

A. 6435 Albert Pike.

Q. And is that actually in Hot Springs?

A. It's in the country about 7 miles outside of Hot Springs.

Q. What's the name of the town? Is it Royal?

A. Royal, Arkansas.

Q. How long have you lived at that address?

A. At this present address, since -- the winter of '92.

Q. Had you lived somewhere else in Arkansas before that?

A. Yes. We had another farm over there, and I moved up there in May of '86.

Q. So you've lived in Arkansas at one of these two residents since --

A. '86.

Q. Who do you live with at your current residence?

A. Roger Moore and Carol Moore.

Q. Are Roger Moore and Carol Moore married?

A. Yes.

Q. How do you know that? Have they been married as long as you've known them?

Karen Anderson - Direct

A. As long as I've known them, they've been that way.

Q. Do you know who owns the house in which you live?

A. Roger and Carol.

Q. Have you ever seen the deed for the ownership of their home?

A. Yes, I have.

Q. Does it say that Roger and Carol are sister and brother?

A. Yes, it does.

Q. Do you know how that happened?

A. It happened because it was an assumption on the real estate person.

MR. TIGAR: Excuse me, your Honor. Object to hearsay.

THE COURT: Just a moment, please.

Objection sustained.

BY MS. WILKINSON:

Q. Do you know that Roger and Carol are not brother and sister?

A. Yes, I do.

Q. Now, how long have you known Roger Moore?

A. Oh, probably somewhere between 20 and 22 years.

Q. Where did you first meet him?

A. Down in Ft. Lauderdale, Florida.

Q. What was he doing at that time?

A. He was a boat builder.

Q. What were you doing at the time?

Karen Anderson - Direct

A. I worked at a place that's called Parker Merrick. They handle all kinds of noncorrosive fasteners.

Q. Other than working at that job, did you have some outside interests that you pursued down in Florida?

A. Oh, I had my horses that I worked with, did a lot of camping.

Q. Have you always been interested in horses?

A. Yes.

Q. Do you have animals out at the ranch that you live in in Arkansas right now?

A. I'm afraid so.

Q. Tell us what animals you have out there.

A. Oh, there is -- there is three horses. There is probably 24 ducks, a couple of geese, seven cats, a parrot, two other type of parrots.

Q. And at the time you moved up from Florida to Arkansas to the first residence, did you bring some of those animals with you?

A. We brought them all. I had at that time -- I had two

horses, one dog, the parrots. I brought some of the ducks with me.

Q. And when you moved to your current residence in Arkansas, did you transfer or bring all those animals to your current ranch?

A. Yes. Yes.

Karen Anderson - Direct

Q. Do you take care of them there?

A. Yes.

Q. Now, when you moved up from Florida to Arkansas, what was Mr. Moore doing at that time?

A. He had sold his boat-company business. He still owned the building down in Ft. Lauderdale, but he was basically working the stock market.

Q. Had he been financially successful in the boat-building business?

A. Extremely.

Q. So was he retired and working the stock market at that time?

A. Yes.

Q. And does he live at the house in Arkansas full-time with you?

A. No. He spends basically the summer months. From December till about the first of April, he's in Florida.

Q. And do you reside at the Arkansas residence the entire time?

A. Year-round.

Q. What type of work did you do when you moved to Arkansas?

A. At Arkansas itself?

Q. Yes.

A. Basically just took care of the farm. Later on, started a small arms/ammunition business.

Karen Anderson - Direct

Q. Okay. Let's talk about that a little bit. Do you recall when you started this ammunition business?

A. Oh, probably I'm going to say '88, '89, in that vicinity.

Q. And did you start that business with Mr. Moore?

A. Yes.

Q. And how did you first start it?

A. Prior to that when we used to take some vacations out into the West -- he had done gun shows a long time ago, and we used to attend a few of them.

MR. TIGAR: Your Honor, object to what he had done a long time ago unless there is personal knowledge.

THE COURT: Yes.

BY MS. WILKINSON:

Q. Do you have personal knowledge of this?

A. Yes.

Q. Okay. Now, you went to --

THE COURT: Well, just a moment. How do you have personal knowledge of what he did before you met him?

BY MS. WILKINSON:

Q. Was it before you met him?

A. He had done some right after I had met him and had told me about this.

MR. TIGAR: Objection.

THE COURT: Well, we'll strike anything that he told her.

Karen Anderson - Direct

MS. WILKINSON: Okay.

BY MS. WILKINSON:

Q. When you and Mr. Moore were in Arkansas, did you travel to some gun shows?

A. Yes.

Q. Did he have an interest in firearms and ammunition?

A. Yes.

Q. Did you develop a -- did you, yourself, develop an interest in firearms and ammunition?

A. Had always done some target shooting, so yes.

Q. Did you have some of your own firearms?

A. Yes.

Q. What type of firearms did you have when you moved up to Arkansas?

A. When I moved up to Arkansas, I had a little .22 Browning that I had bought when I was about 9 or 10 years old.

Q. And when you went to gun shows with Mr. Moore, did you survey the tables and learn more about guns and ammunition?

A. Yes.

Q. Now, when you started the ammunition business, did you start that at gun shows, or did you have some other way of engaging in the business of selling ammunition?

A. Basically, we started the ammunition at the gun shows and then prior -- not prior but during that period of time, people would ask if they could get a hold of you somehow, so we

Karen Anderson - Direct

printed up a little flier and started a small mail-order business.

Q. Do you recall when you started that mail-order business?

A. Probably '89, somewhere around there.

Q. Now, when you first started selling ammunition at the gun shows, did Mr. Moore accompany you and participate in the sales?

A. Yes.

Q. And did he continue to do that?

A. No, he did not.

Q. What happened?

A. Basically, he got tired of it, and --

Q. So who did the work?

A. So I got -- I got the job, but I volunteered for it.

Q. Could you tell the jury what type of ammunition you sell in your company?

A. It's what we call "exotic ammunition." Some of it is hard-

to-find items. It's tracers, incendiary rounds. We also have some smoke devices, parachute flares, flares.

Q. Are some of those items commonly called "pyrotechnics"?

A. Yes. All of the flares and parachutes, like that are called "pyrotechnic."

Q. Could you tell the jury the name of the company.

A. We first called it the American Assault Company, but by people coming up and looking at the table, they nicknamed it

Karen Anderson - Direct

The Candy Store.

Q. Did you at some point change the name of the company to The Candy Store?

A. No, not really. We just used them both.

Q. Now, you said that you sold exotic ammunition and some pyrotechnics. Have you ever sold any type of explosives?

A. No.

Q. Have you ever had any inventory of explosives?

A. No.

Q. Have you ever had any explosives in your residence in Arkansas?

A. No.

Q. Now, once you started the mail-order business for your

ammunition business, how many gun shows did you attend each year?

A. When we first started, quite a few. Probably around 20 to 22.

Q. During what years did you attend 20 to 22 gun shows?

A. That was basically in '88, '89, maybe '90.

Q. Then what happened?

A. Then gradually started dropping a lot of the smaller shows down to where we were down to 15.

Q. And at that time were you going -- was Mr. Moore accompanying you to each gun show?

A. No.

Karen Anderson - Direct

Q. Tell us what happened.

A. He basically just got really tired of it. There wasn't that much interest in it. There wasn't anything out there that he was trying to collect anymore; so basically, it just was up to me to -- to continue to go.

Q. Well, tell us what you do when you go to a normal gun show to sell ammunition.

A. You contact the promoter, find out if they have tables. If they have tables, then you write them a check, or send them a money order, or make reservations, or give them a deposit, or pay it in full. You get your table.

Then approximately they start on Friday. That's setup day for dealers. You go in on Friday, you set up, it's open to the public on Saturday and Sunday.

Q. And what is the -- can you even describe the standard size

of a gun show?

A. Oh, the smaller shows can be anywhere from 50 to 150 tables. Larger, you're getting up into the 2- to 5-. Some of the more prestigious shows like Tulsa, Oklahoma, is 3500 tables.

Q. Now, when you register for these gun shows, would you register in your name, or Mr. Moore's name?

A. Registered in my name, K. Anderson, just the initial K.

Q. And were you ever registered or was anyone in your business ever registered under Carol Moore's name?

Karen Anderson - Direct

A. Yes.

Q. Why would it be that you would register under Carol Moore's name?

A. This was the Soldier of Fortune. She and Roger were the first ones to attend there. And it was basically done -- all the paperwork was done by Carol, so it was put in her name.

Q. So Mrs. Moore participated in the business as well as you two?

A. Yes.

MR. TIGAR: Excuse me, your Honor. Objection to the leading.

THE COURT: Sustained as to leading.

BY MS. WILKINSON:

Q. Who else participated in the business?

A. Carol Moore.

Q. As you attended these gun shows and sold your ammunition, did you have opportunity to walk around the gun shows and see what other people had for sale?

A. Certainly.

Q. How did that occur?

A. On Friday after I set up and get everything there, I cover the table up and then I just proceed to walk down and see what other people have.

Q. So during your time over the past several years going to gun shows, have you become familiar with what's sold at gun

Karen Anderson - Direct

shows?

A. Yes.

Q. What type of things are primarily sold there?

A. You can go anything from flea-market area all the way up to the guns. Books, ammunition, guns, military clothing. You can have all types of western art.

Q. And then I think you said books are sold. Is that right?

A. Yes.

Q. Have you seen videotapes for sale?

A. Oh, sorry. Yes, I have.

Q. At certain times during your business, have you sold a variety of items other than ammunition?

A. Yes.

Q. What type of items have you sold?

A. I have clips. Once in a while I have some barrels, some .50 caliber barrels and some AR-15 barrels. There will be different types of clips. Sometimes I've had some AK clips, Ruger clips, .45 clips. Sometimes I'll have something personal of my own that I'll also put on there to sell.

Q. Have you ever personally sold videotapes?

A. Yes.

Q. What type of videotapes?

A. I've had some videotapes on .45 -- on how to operate .45, or shotgun. I've also had some political tapes.

Q. Have you ever sold pornographic videotapes?

Karen Anderson - Direct

A. Yes.

Q. Did Mr. Moore ever sell those?

A. No.

Q. Now, you've told us about many of the items that you've seen for sale. Have you ever seen ammonium nitrate for sale at a gun show?

A. At a gun show, no.

Q. Have you ever seen any type of explosives sold at a gun show?

A. No.

Q. Have you ever seen any small quantities of fertilizer sold at a gun show?

A. No.

Q. Now, when you've attended these gun shows, have you also had the opportunity to speak with the other exhibitors or the other dealers?

A. Yes.

Q. And without telling us the content of the conversation, generally what type of conversations did you have?

A. Basically it was just passed from show to show: How was the Texas area, how was Dallas? You know, different shows on what was going on; and in general, once in a while you would discuss a gun or something, if you were looking at one.

Q. And through these conversations and through your experience selling ammunition, have you come to be knowledgeable about

Karen Anderson - Direct

guns and ammunition?

A. Yes.

Q. As part of your ammunition business, have you ever sold large quantities of firearms?

A. No, not at all.

Q. Have you ever sold any firearms at a gun show?

A. Yes.

Q. And why is that?

A. Mainly if it was something that I purchased and I took it home and it didn't work right, I would turn around and just resell it.

Q. But would you consider yourself a gun dealer?

A. No.

Q. Now, is it necessary in your business -- that is, the ammunition business -- for you to understand what guns do and what different types of ammunition they might need?

A. Yes.

Q. And when you sold ammunition at gun shows for your business, how did you package it?

A. Most of it is packaged in 10-round bags. There are a couple of items that I pack in 20-round bags.

Q. Why do you pack them in 10-round bags?

A. Because it's so expensive that the normal person doesn't want to pay more than for a small amount.

Q. When you say "expensive," do you mean because you're

Karen Anderson - Direct
selling exotic ammunition?

A. Yes.

Q. Other types? Can you give us some more details about the types of exotic ammunition that you sell?

A. Well, on the tracer rounds, like I pack them in 10-round bags because they go for about 80 cents a round, so you don't find very many people wanting to buy 100 rounds at \$80.

Q. Do you sell incendiary rounds?

A. Yes, I do.

Q. What type?

A. I have it in .22, .308, .30-06, .45, 9-millimeter, .50 caliber.

Q. Do you sell anything called Star Burst?

A. Yes.

Q. What's that?

A. It's basically like a lot of the stuff that you see in the movies. When it hits on impact, it gives you a shower of the sparks when it hits.

Q. Do you have any other kind of showy ammunition?

A. We've got -- in the shotgun round we have what they call the Dragon's Breath, which is similar to -- they compare it to a flamethrower because what it is is it gives you a shower of sparks over -- Probably up to 300 feet is possible.

Q. Do you sell any standard ammunition in your business?

A. Once in a while I only have .223, because we do shoot .223

Karen Anderson - Direct
a lot ourselves.

Q. Now, when you put these rounds in the plastic bags for sale, do you mark them in a certain way?

A. Yes.

Q. How do you mark them?

A. Some of the stuff has a little rubber stamp that I have that is from a stamp kit of mine that when I was a child that I had.

Q. And how do you mark those?

A. Those are marked LC, and it will have a .308 on it.

Q. What does "LC" stand for?

A. "LC" stands for Lake City, and it will also have an "API,"

which stands for "armor-piercing incendiary."

Q. What is Lake City?

A. Lake City is the ammunition plant up here in -- just north of Kansas City, Missouri. It's our U.S. ammunitions plant.

Q. It's a military ammunition plant?

A. Yes.

Q. Are you allowed to sell military ammunition?

A. Surplus.

Q. And that's what you would put in these bags and stamp "LC"?

A. Yes.

Q. Have you ever seen anyone else at a gun show use your LC stamp to sell ammunition?

A. No.

Karen Anderson - Direct

Q. Prior to November 5, 1994, did you have bags of ammunition in your home that were stamped LC?

A. Yes.

Q. What caliber rounds were they?

A. .308.

Q. And what type of rounds were they?

A. It was armor-piercing incendiary.

Q. Now, before coming to court today, were you asked to review property that was seized from Mr. Nichols' house?

A. Yes.

Q. Have you also reviewed photographs of Mr. Nichols' house as taken on April 22, 1995?

A. Yes.

Q. And did you see some of your property in his house?

A. Most certainly.

MS. WILKINSON: Your Honor --

THE COURT: I think this is a point where we could take the break.

MS. WILKINSON: Great.

THE COURT: You may step down now. We're going to take a noon recess.

Members of the jury, we'll take our usual noon recess period of 90 minutes, during which, as usual, of course, you'll follow the cautions and restrictions always given at recesses, avoiding discussion of anything connected with the case among

yourselves and with all other persons and avoiding anything outside of the evidence which could relate to the issues on trial and improperly influence you in your decision.

So we'll excuse you now until about 1:34.

(Jury out at 12:04 p.m.)

THE COURT: All right. We'll be in recess.

(Recess at 12:04 p.m.)

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Exhibit	Offered	Received	Refused	Reserved	Withdrawn
572	8857	8857			
853	8910	8911			
973	8921	8921			
976	8929	8929			
1012	8928	8928			
1708	8840	8840			
1709	8835	8835			

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Exhibit	Offered	Received	Refused	Reserved	Withdrawn
1710	8840	8840			
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1800	8830	8831			
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Exhibit	Offered	Received	Refused	Reserved	Withdrawn
1993	8855	8855			
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2018	8861	8861			
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DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
D1646	8826	8827			

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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 17th day of November, 1997.

Paul Zuckerman

Kara Spitler

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