

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 95)

PROCEEDINGS BEFORE THE HONORABLE RICHARD P. MATSCH,

Judge, United States District Court for the District of Colorado, commencing at 8:45 a.m., on the 28th day of November, 1997, in Courtroom C-204, United States Courthouse, Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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APPEARANCES

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

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

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

* * * * *

PROCEEDINGS

(In open court at 8:45 a.m.)

THE COURT: Be seated, please.

Counsel approach, please.

(At the bench:)

(Bench Conference 95B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

MR. TIGAR: May I just have a moment to let my

colleagues know what --

THE COURT: Yes.

All right. Bring in the jury.

(Jury in at 8:48 a.m.)

THE COURT: Members of the jury, good morning.

JURORS: Good morning.

THE COURT: We're ready to resume our trial and call for the Government's next witness.

MR. MACKEY: I think Mr. Wilson was --

MR. TIGAR: Mr. Wilson was still being cross-examined, your Honor.

THE COURT: Excuse me.

Mr. Wilson, you'll return to the witness stand under the oath earlier taken.

THE WITNESS: Thank you.

(Alton Wilson was re-called.)

THE COURT: All right, Mr. Tigar.

MR. TIGAR: Thank you, your Honor.

CROSS-EXAMINATION CONTINUED

BY MR. TIGAR:

Q. Good morning, Agent Wilson.

A. Good morning.

Q. When we were last together, we were talking about that

Alton Wilson - Cross
parking lot.

A. That is correct, sir.

Q. And we're going to keep on talking about that parking lot but not much longer.

A. Okay.

Q. I would like to show you now the -- a portion of what's been admitted as Exhibit E89 -- Defense Exhibit E89. And that, we were talking about on Wednesday. That's the diagram of the parking lot. Correct, sir?

A. Yes, sir.

Q. And that diagram has these boxes we established that represent automobiles; correct?

A. That is correct, sir.

Q. Now, that diagram was prepared by Special Agent Lester. Is that your understanding?

A. That was not my understanding.

Q. Okay. Well, who is it your -- who, according to your understanding, prepared the parts of the diagram that did not include the evidence-recovery numbers?

A. I was not aware of the individual who prepared the diagram. I didn't look at the author's name on the diagram.

Q. All right. So when you received the diagram without the evidence-recovery numbers on it, all of these boxes that indicate cars were already on it. Is that right?

A. That is correct, sir.

Alton Wilson - Cross

Q. And all of this information down here in the legend, RP1, RP2, RP3: That was already on it. Correct?

A. I believe that would be correct, sir.

Q. And was that handed to you to help you in your search process?

A. It was, sir.

Q. And from whom did you receive it?

A. I do not recall who that individual was who gave it to me.

Q. Somebody that was in charge of the search teams. Is that fair to say?

A. Yes, sir.

Q. And then you put on here all of the numbers that are not in the boxes. Correct?

A. That is correct, sir.

Q. And we established on Friday that there is no number to Item 06. Correct?

A. That is correct.

Q. Now, when you were doing this evidence-recovery process, were you wearing gloves?

A. I was not, sir.

Q. Was Mr. Kelly, to your -- as far as you could see -- wearing gloves?

A. Yes, he was, sir.

Q. What kind of gloves were those?

A. I do not recall the exact kind of gloves that Mr. Kelly was

Alton Wilson - Cross

wearing.

Q. Were they -- I'm sorry? Didn't mean to interrupt your answer.

Were they latex gloves, or cloth gloves?

A. Again, I do not recall the exact kind.

Q. Uh-huh. Did -- during the -- any of the searches that you conducted, did you wear latex gloves?

A. In this parking lot?

Q. At any time.

A. Yes.

Q. And where did those latex gloves come from that you were furnished?

A. From the crime scene. In other words, there were supplies on hand.

Q. And were the gloves that you got out of a box of gloves that looked like you could buy in a drugstore, or do you know?

A. I really can't recall at this point.

Q. Were the gloves lined; that is to say, did they have a powder inside them so that they could be taken on and off more easily?

A. That, I don't recall, sir.

Q. Did you happen to notice the -- do you know what the difference is between gloves that have a powder inside them and those that don't?

A. Not really, sir.

Alton Wilson - Cross

Q. So you're not aware of what's placed inside of gloves to make them easier to get on and off. Is that true?

A. That is correct, sir.

Q. Now, you testified on Friday that you did not take pictures. Is that correct?

A. That is correct, sir. Actually, I testified on Wednesday.

Q. On Wednesday, that's right. I got my days all goofed up. There we are.

You testified on Wednesday that you didn't take pictures. Is that right?

A. That's correct.

Q. Who took pictures?

A. I do not recall the exact identity of the person who took the pictures.

Q. Now, did you make up -- did you write up a log of the pictures that were taken?

A. Yes, I did.

Q. Okay. I'm going to show you what has been marked as Defendant's Exhibit E5 and ask -- I'm going to turn to the first page inside the cover and ask if that's your handwriting?

A. Yes, it is, sir.

Q. And your signature. Correct?

A. That is correct, sir.

Q. But none of the -- will you just look through there and make sure that nothing else in there represents either a

Alton Wilson - Cross

picture that you took or your handwriting.

A. Okay. I've reviewed each of these photographs.

Q. And what I've just shown you, that first page there is the only thing that's in your handwriting. Correct?

A. That is correct, sir.

Q. All right. And you didn't take any of these pictures --

A. That's correct, sir.

Q. -- is that correct?

Now, were you furnished at the time of the search a -- an item location form to fill out?

A. That, I'm not certain. Can you describe it a bit further for me?

Q. Sure. Let me put it up here. It's marked as page 007 just with our own Bates' stamp numbering of what's been received as E89. Do you see that item location form?

Do you remember that being a part of the packet of materials that you were furnished at the time?

A. No, I don't recall it being a part.

Q. Okay. But you'd agree with me that this one is blank. Correct?

A. That is correct, sir.

THE COURT: I'm confused. Is that a part of E89?

MR. TIGAR: Yes, it is, your Honor. It is Bates' page 007 of what's been marked as E89.

THE COURT: Thank you.

Alton Wilson - Cross

BY MR. TIGAR:

Q. Now, we did talk on Wednesday about the evidence-recovery log. Correct?

A. Yes, sir.

Q. This page 003; and this is your handwriting; correct?

A. That is correct, sir.

Q. And there is a column here that says "photo." Correct?

A. That is correct.

Q. And you wrote "yes," "no," and so on and filled in that column. Correct?

A. That is correct.

Q. Now then, down here, there is an item and there is a "no," but there is an asterisk. Correct?

A. That's correct, sir.

Q. And at the bottom, we see "Photo of Object Taken." Do you see that?

A. Yes, sir.

Q. When were the asterisks put in?

A. On the day I completed this log, sir.

Q. And when was that?

A. During the time of the search, the recovery effort.

Q. So at first you wrote "no" on some and then you put an asterisk. Correct?

A. That is correct.

Q. Why did you do that?

Alton Wilson - Cross

A. Can I see the form again? That page.

Q. I'll give you your whole form so that you can look at it.

And then what we were looking at, sir, is this Bates' page 3; and those are our numbers, you know, for evidence purposes.

A. Okay.

Q. But if you can just look at the yeses and the nos there and tell us how it was that it got to be a no and then it got to be a yes.

MS. WILKINSON: Your Honor, could we use a reference -- for example, one says dry swabbing of metal frame; that has a no -- so we know which one he's explaining?

THE COURT: You're asking about all asterisks.

MR. TIGAR: Yes. I'm asking him when did he start making asterisks. I'll be happy to show him the whole document, but I wanted to give him the whole document --

THE COURT: I understand.

THE WITNESS: I will start with item CT-4/21-07 where in the description column it reads "dry swabbing of metal frame." The swabbing itself was not photographed. The metal frame was.

BY MR. TIGAR:

Q. So that when we see an asterisk, we see that only refers to

the fact that the swabbing wasn't photographed but the metal frame --

Alton Wilson - Cross

A. That's correct.

Q. -- was. Is that right?

A. That's correct, sir.

Q. Okay. All right. Now, let me put this up so we can explain to the jury what we've just been talking about.

A. All right, sir.

Q. I'll put back up this page and zoom out. For example, 06 says yes, a picture was taken. Correct?

A. That's correct, sir.

Q. But then 07 says "dry swabbing of metal frame," and it says "no," but then it says "photo of object taken." That means that you did take a picture of the object from which you took the swabbing but you didn't take a picture of the swab itself. Correct?

A. That's correct, sir.

Q. And these entries were made at or about the time you were doing your search; correct?

A. That's correct, sir.

Q. Now, I'm going to show you finally what has been received in evidence as Government's Exhibit 736 and ask you to take note of the pink paint around it. Do you see the pink circle there?

A. Yes, I do, sir.

Q. And in fact, do you recognize one of the people in this picture?

Alton Wilson - Cross

A. Yes, I do.

Q. That's Linda Vernon; right?

A. That's correct, sir.

Q. Now, does -- were there pink paint, like circles, in the parking lot on the 21st when you were searching it?

A. I do recall seeing some, sir.

Q. Do you know who placed -- did they appear to be spray painted circles?

A. That, I cannot tell, sir.

Q. Now, do you know who made the pink, painted circles in the parking lot when you were searching?

A. I do not, sir.

Q. Did -- were you, in terms of your briefings as to what evidence to seize, told anything about what you should do about matters, items that were within those circles or were designated by those circles?

A. Not that I recall, sir.

Q. So there wasn't anything about that that was of concern to you as you did your search. Is that fair to say?

A. That's correct.

MR. TIGAR: Thank you very much, Agent. I have no further questions.

redirect questions.

THE COURT: Ms. Wilkinson.

MS. WILKINSON: Mr. Tigar, may I use E89?

Thank you, your Honor.

Alton Wilson - Redirect

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Wilson just to get it straight in everybody's mind, on Wednesday you were talking about one piece of evidence that you had seized. Correct?

A. That is correct.

Q. And you marked it on April 21; is that right -- or it was marked on April 21?

A. That is correct.

Q. Now, when Mr. Tigar was asking you questions, he pointed out that you had not listed it on E89 on the diagram, location. Is that correct?

A. That is correct.

Q. But did you list it on your evidence-recovery log?

A. Yes, I did.

Q. Let's show the jury that. Show you page 003 -- your Honor -- of Government's -- excuse me -- Defense Exhibit E89.

THE COURT: Thank you.

MS. WILKINSON: Let's see if I can focus in a little bit more.

BY MS. WILKINSON:

Q. Now, let's go down the list here, Mr. Wilson, down to CT-4/21-06. Is that the item we've been talking about?

A. Yes, it is.

Q. Just to make it easy -- the 4/21 signifies what?

Alton Wilson - Redirect

A. The date.

Q. Of the recovery?

A. That is correct.

Q. So is this the sixth item that you seized that morning?

A. That is correct.

Q. So can we refer to it as 06 just to keep it simple?

A. Yes.

Q. And it's described as what, a wood panel?

A. That is correct.

Q. And right over here, what does that say under "received"?

A. Under "received" is indicated the initials of Ron Kelly.

Q. All right. And next to whether it was photographed or not, what did you indicate?

A. I indicated yes to indicate that it was photographed.

Q. And that is the piece that you examined, Government's Exhibit 664 that was in front of you on Wednesday?

A. Yes, it is.

Q. Now, just to assist the jury -- it's not in evidence yet, but it's going to be described by other witnesses. Can you describe what 664 looks like?

A. Yes, I can.

Q. Tell us what the front looks like.

A. The front is yellow and red in color. The back is wood, and it appears to have come from the box panel of the Ryder truck.

Alton Wilson - Redirect

Q. And on the bag, is there an indication of the number -- the item number on it?

A. Yes, there is.

Q. What does it say?

A. "CT-4/21-06, 4-21-95," and the initials "RLK" for --

Q. So that's Item No. 6 that's indicated here on your evidence-recovery log. Is that correct?

A. That is correct.

Q. So the only thing you didn't do was put it on that diagram. Is that right?

A. That is correct.

Q. And it was photographed in place?

A. Yes, it was.

Q. Now, you were also asked about the photo log. And again just let me use the Defense Exhibit E5. You just looked at that. Correct?

A. Yes.

Q. And you said -- if I can show the first page, which is marked --

MR. TIGAR: Excuse me, your Honor.

THE COURT: It's not evidence.

MS. WILKINSON: I'm sorry, your Honor.

THE COURT: It's not in evidence.

MS. WILKINSON: We'd offer Defense Exhibit E5.

MR. TIGAR: We object to that, your Honor. Portions

Alton Wilson - Redirect

other than what he wrote have not been authenticated, your Honor.

MS. WILKINSON: I'm just offering the first page, then, so he can explain, your Honor, which is the page he wrote on.

THE COURT: Well, we can make that a Government exhibit then separately.

MS. WILKINSON: That's fine.

MR. TIGAR: I have no objection to that page being received for that purpose, your Honor.

THE COURT: All right. Let's give it a Government designation. I assume you have a copy of it somewhere.

MS. WILKINSON: We do.

THE COURT: So we can limit the exhibit to the first page or single page.

MS. WILKINSON: Yes.

THE COURT: Well, to make it easy, let's just use the designation number, whatever it is, and you can use that page.

MR. TIGAR: On the understanding with the next witness it will come into evidence, your Honor, I have no objection to it being shown in this manner and being referred to by its exhibit number so we keep it simple.

MS. WILKINSON: I think that will be easier. There is a page number. I'll say Defense Exhibit E5, page 3.

MR. TIGAR: That's acceptable.

Alton Wilson - Redirect

BY MS. WILKINSON:

Q. With those limitations, Mr. Wilson, let's look at page 3. This is your handwriting. Is it not?

A. Yes, ma'am.

Q. And up at the top, can you just tell the jury what that says?

A. Yes. It says "21st April '95, photograph log of search conducted at parking garage located across from blast site."

Q. Now, you say "parking garage" there. That is the same parking lot that you've described to the defense and described to us?

A. Yes, it is.

Q. Now, starting at the beginning, you have Frame No. 1. Is that right?

A. That is correct.

Q. You don't recall taking the pictures, do you?

A. I do not.

Q. Do you know whether this was Frame No. 1 on the roll, or was this the first picture you wrote down?

A. It was the first picture that I wrote down.

Q. So if we were to look through the photographs in here, would these frame numbers correlate with the actual frame numbers of the photographs?

A. They would not.

Q. Now, these descriptions that you use: Are these the same

Alton Wilson - Redirect

descriptions that you used in your evidence-recovery log?

A. Yes.

Q. Wood panel and then the CT number?

A. Yes, they are.

Q. And down here for example, Frame No. 5: Do you see that?

A. Yes, I do.

Q. You have metal frame; right?

A. Yes, ma'am.

Q. And it's Item No. 7 that you were -- that's received?

A. That's correct.

Q. If we then go back to the evidence-recovery log, which is Defense Exhibit E89, page 3, and we try and correlate that, that's No. 7 -- right -- we were just looking at?

A. That's correct.

Q. Metal frame? And we go back here, we look at No. 7, and it says "dry swabbing of metal frame." Correct?

A. That is correct.

A. That is correct.
Q. And in the photo, you have the asterisk with a "no"?
A. That's correct.
Q. And does that mean that there is a photograph of this metal frame?
A. Yes.
Q. And that's what's indicated on your evidence-recovery log; is that correct?
A. That's correct.

Alton Wilson - Redirect

Q. So on the item we are interested in, No. 6, we go back to page 3 of the photo log, E5, and you indicate there is a photograph of that; correct?
A. Yes, I do.
Q. You indicate it's Frame No. 4?
A. That is correct.
Q. Is that the frame of the photograph?
A. It is not.
Q. You were not responsible for having these photographs processed, were you?
A. I was not.
Q. And you didn't number the frames, did you?
A. I did not.

MS. WILKINSON: We have no further questions, your Honor.

THE COURT: Mr. Tigar, any recross?

RECROSS-EXAMINATION

BY MR. TIGAR:

Q. So we have established that it was the parking lot, not the parking garage. Correct, sir?
A. That is correct.
Q. And then looking at page 3 here, we see the first item that you recovered was a wood panel, yellow and red. Correct?
A. That is correct, sir.
Q. Now, that item: Was that yellow and red on one side and

Alton Wilson - Recross
wood on the other side?

A. To the best of my recollection, it was, sir.
Q. Now, you've also told us that the item in front of you, which is 06, is a wood panel that's yellow and red on one side and wood on the other. Correct?
A. That's correct, sir.
Q. But you didn't put "yellow and red" down on 06 on your evidence-recovery log; correct, sir?
A. That's correct, sir.
Q. And when you got over to the -- what's -- this is E5, 03 -- you just called these "wood panels" without any identification as to what color was on them; correct?
A. That is correct, sir.
Q. So with respect to Item No. 01, there is a distinction between or a difference between the description on the

evidence-recovery log and the description on the photo log;
correct?

A. That is correct, sir.

Q. And that has to do with the fact that one says yellow and red and the other does not; correct?

A. That is correct, sir.

MR. TIGAR: I have no further questions.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Wilson, you were just asked about your description of

Alton Wilson - Redirect

Item 01. Is that right?

A. That is correct.

Q. Now, that's a different item from 06. Is that right?

A. That is correct.

MS. WILKINSON: Your Honor, may I show the witness Government's Exhibit 737?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Mr. Wilson, I'm showing you Government's Exhibit 737. Do you see that?

A. Yes, I do.

Q. And do you see the marking on here with the CT number?

A. Yes, I do.

Q. What does it say?

A. CT-4/21-01.

Q. Can you compare that, Government's Exhibit 737, which is 01, to 06, which is Government's Exhibit 664A? Are they different?

A. Yes, they are different.

Q. Are they different shapes?

A. Yes, they are.

Q. Do they both have yellow and red paint?

A. Yes, they do.

Q. And do they have different amounts of the red paint on each item?

Alton Wilson - Redirect

A. Yes, they do.

Q. Which item -- and use the Government exhibit number, please -- is bigger?

A. Exhibit No. 737.

Q. Okay. And is there any doubt in your mind that Government's Exhibit 664A --

MR. TIGAR: Object to that, your Honor.

THE COURT: Yes. Rephrase it.

MS. WILKINSON: That's fine, your Honor. I have no further questions.

MR. TIGAR: Nothing further, your Honor.

THE COURT: All right. Is the witness to be excused?

MS. WILKINSON: Yes.
THE COURT: Agreed, Mr. Tigar?
MR. TIGAR: Yes, your Honor.
THE COURT: You may step down. You are excused.
THE WITNESS: Thank you, your Honor.
THE COURT: Next witness, please.
MR. MACKEY: FBI Examiner Ron Kelly.
THE COURT: All right.
THE COURTROOM DEPUTY: Would you raise your right

hand, please.

(Ronald Kelly 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: Ronald L. Kelly, K-E-L-L-Y.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Ms. Wilkinson.

MS. WILKINSON: Thank you.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Mr. Kelly.

A. Good morning.

Q. Could you tell the ladies and gentlemen of the jury where you work?

A. I work with the Federal Bureau of Investigation.

Q. Are you assigned to the laboratory?

A. Yes, I am.

Q. Are you a chemist there?

A. Yes, I am.

Q. And I want -- are you here today to testify about the recovery of a piece of evidence on April 21, 1995?

A. That's correct.

Q. Let's turn to that day. Were you sent to Oklahoma City to assist with the investigation of the Oklahoma City bombing?

A. Yes, I was.

Q. And were you working at the crime scene on April 21, 1995?

A. Yes, I was.

Q. Were you part of a specific search team?

Ronald Kelly - Direct

A. We were on the chemistry team.

Q. Who was on your team with you?

A. I was working with Agent Steve Burmeister.

Q. And did you have other people assisting you?

A. That is correct.

Q. Did Mr. Wilson assist you?

A. Yes, he did.

Q. And were there other individuals that were there with you at certain times?

A. Yes, there were.

Q. On April 21, did you search the parking lot across from the Murrah Building?

A. Yes, I did.

Q. What type of items were you looking for on that day,

Mr. Kelly?

A. I was looking for items that may have some significance as far as chemical residues.

Q. And during your search of the parking lot, did you have photographs taken of certain items that you were seizing?

A. Yes, there were photographs taken.

Q. And did you, yourself, seize certain items?

A. Yes, I did.

Q. Did you also take swabbings from certain items?

A. Yes, I did.

Q. Did you cause photographs to be taken of those swabbings?

Ronald Kelly - Direct

A. Not of the swabbings, no.

Q. Did you take -- cause photographs to be taken of the items that were swabbed?

A. That is correct.

Q. Now, if I could, I want to show you the evidence-recovery log, which is marked Defense Exhibit E89. Turn to page 03.

You did not maintain this log. Is that right?

A. No, I did not.

Q. Who maintained it?

A. Agent Wilson.

Q. Now, this numbering system that's right here, CT-4/21-01: Is this your numbering system?

A. Yes, I chose to use that system.

Q. What does the "CT" signify?

A. Chemistry Team.

Q. What does the "4/21" signify?

A. The date.

Q. And beginning with "01," what does that signify?

A. The unique item number.

Q. During the search that day, did you recover several items that you believed were portions of a wood panel?

A. That's correct.

Q. And did you indicate that here on your log or have it indicated on the log?

A. Yes. There are several notations that include "wood

Ronald Kelly - Direct

panel."

Q. Let's turn to the one that we're all interested in, 06 down here. Did you recover that item on April 21, 1995?

A. Yes, I did.

Q. And was it marked CT-4/21-06?

A. Yes, it was marked with that number.

Q. Did you, yourself, recover it?

A. Yes, I did.

Q. Where did you recover it?

A. I recovered it from the parking lot on the north side of the building in the northwest corner.

Q. All right. Do you recall what it looked like?

A. Yes. I do.

A. Yes, I do.

Q. What did it look like?

A. The item was a red-and-yellow wood panel.

Q. And was the red and yellow on one side or both sides?

A. There is red and yellow on one side and a woodish color on the other side.

Q. Did you recover other items that day that had red and yellow paint on one side?

A. Yes, I did.

Q. Have you compared those items to the one that we've marked or that you marked as 06?

A. Yes, I have.

Q. And do you recall specifically where 06 was recovered?

Ronald Kelly - Direct

A. Yes, I do.

Q. Did you cause a photograph to be taken of that item before you seized it?

A. Yes, I did.

Q. Do you recall who took those photographs?

A. No, I don't.

Q. Did you once say that you thought Mr. Wilson took those photographs?

A. My recollection was that Mr. -- Agent Wilson assisted in the photography; that is correct.

Q. Did he maintain the photography log?

A. Yes.

Q. Do you know for a fact who took the photographs?

A. I'm not certain with any individual photo, no.

Q. You do recall causing a photograph to be taken of 06?

A. Yes, I do.

Q. Would you recognize that photograph?

A. Yes, I would.

Q. I want to show you Government's Exhibit 665. Do you recognize that?

A. Yes, I do.

Q. How do you recognize it?

A. I recognize it by several unique items in there.

Q. Did you take swabbings of one of the items in there?

A. Yes, I did.

Ronald Kelly - Direct

Q. And do you also see 06 in this photograph?

You don't have to point it out yet because it's not in evidence. Do you recognize it?

A. Yes, I do.

MS. WILKINSON: Okay. Your Honor, we offer 665.

MR. TIGAR: May I examine, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Mr. Kelly, that photograph you've just been shown is an

enlargement of a photograph that is contained in a book. Is that correct?

A. That is correct.

Q. And the book is one that contains all of the -- a number of pictures and then a log that has been prepared and initialed by Agent Wilson. Is that correct?

A. If I could see that book, I could confirm that, yes.

Q. I show you what has been marked as Defendant's Exhibit E5, sir, and ask if you would look at that and confirm that.

Good morning. My name is Michael Tigar. I'm helping Terry Nichols. I'm sorry. I didn't introduce myself.

A. Good morning, sir.

Yes, sir, I recognize this book.

MR. TIGAR: Your Honor, we would oppose the introduction of that Government exhibit unless it comes in as a part of the entire book.

THE COURT: Well, are you concerned about the exhibit as -- the photograph as it is enlarged in 665 as not being the same as the one in the book?

MR. TIGAR: No, your Honor. The photograph is the same; but under the rule of completeness, we believe that all of the photographs that relate to this evidence-recovery process should be in, your Honor.

THE COURT: Well, I take it you have no objection, since you offered that exhibit.

MS. WILKINSON: No, I have no objection to both. I would like to have the individual photograph.

MR. TIGAR: If the Government wants -- fine. If they want the enlargement and the book E5 comes in at the same time, then we have no objection.

THE COURT: All right.

MS. WILKINSON: We have another agreement.

THE COURT: Is that okay with you?

MS. WILKINSON: That's fine.

THE COURT: E5 and 665 are received.

DIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Okay, Mr. Kelly. Show the jury what 665 looks like, please. Hold it up for them, please.

All right. Now, why don't I hold it for you so you

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can show them what they're seeing. First of all, start with this metal fragment here. Tell them what that is.

A. This is an item again -- let me start. This is the parking lot. This is an item in the corner of the parking lot next to a wood panel which you can see is yellow and red.

This particular wood panel I recall I labeled as CT-4/21-06; and I took some swabbings from this metal piece, and they were labeled 07 and 08.

Q. Now, this is 06 that we've been talking about all morning. Correct?

A. This item is 06. That is correct.

Q. And how is it situated in this photograph?

A. It's situated on the ground, but it's elevated slightly so not all the surfaces appear to be touching it.

Q. Could you use this red pen and circle on 665 where 06 is or what we've now marked in evidence or marked for purposes of identification as 664A.

MR. TIGAR: He's going to be writing on the exhibit as received, your Honor?

MS. WILKINSON: Yes. That's why we wanted the enlargement.

MR. TIGAR: No objection, your Honor.

THE COURT: All right.

THE WITNESS: Specifically this right here.

BY MS. WILKINSON:

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Q. Have you compared this photograph to Government's Exhibit 664A?

A. Yes, I have.

Q. Is it the same item?

A. Yes, it is the same item.

THE COURT: Now, will you show Mr. Tigar the markings, please.

MS. WILKINSON: Oh, sure.

BY MS. WILKINSON:

Q. Now, on April 21, 1995, when you recovered 06, you told us you recovered other pieces of the wood panel. Is that right?

A. I recovered several wood panels that day. That's correct.

Q. Okay. And were they photographed and in the photograph book that we've now admitted I think as E9?

Excuse me. E5?

A. Some of those wood panels were photographed. There were others that were not photographed.

Q. Okay. Now, you have that photograph log in front of you. Is that right?

A. I have the entire book in front of me.

Q. And have you compared the log done by Mr. Wilson to the photographs?

A. Yes, I have.

Q. And does the log match the photographs?

A. No, it does not.

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Q. Do the wood panels, though, that are described in the log match the photographs?

A. Yes, they do.

Q. Now, let's start with the log. Here at the top we have wood panel and the first one -- right -- CT-4/21-01?

A. That's correct.

Q. Can you see that in the first photograph of the wood panels?

A. Yes, I do, and it's labeled No. 5 in this book.

Q. Let's go through the photographs for the jury. This is the first photograph, is it not?

this photograph, is it not?

A. That's correct.

Q. Okay. Is this the second photograph?

A. Yes, it is.

Q. All right. And can you see in this photograph whether this is 06 or 01?

A. I can clearly see labeled on the bag this item in CT-4/21-01. So that is Item 01.

Q. So there is no way this is 06?

MR. TIGAR: Objection.

THE WITNESS: That item is not 06.

THE COURT: Be careful about the leading.

MS. WILKINSON: Yes.

BY MS. WILKINSON:

Q. Is this 01 or 06, Mr. Kelly?

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A. This item here is 01.

Q. All right. Let's see if we can focus in, and can you take that black pen and reach underneath on the screen and circle where it says CT-4/21-01. Are your initials there?

A. Yes, they are.

Q. Have you also compared that Item 01 to 06?

A. Yes, I have.

Q. Are they different?

A. Yes, they are.

Q. This is marked Government's Exhibit 737. Do you recognize that?

A. Yes, I do.

Q. Does it have your initials on the back?

A. Yes, they are.

Q. Did you seize that item on April 21, 1995?

A. Yes, I did.

Q. Is that a photograph -- is the photograph on the screen a photograph of Government's Exhibit 737?

A. Yes, it is.

MS. WILKINSON: Your Honor, we'd offer 737 for demonstrative purposes.

MR. TIGAR: No objection for demonstrative purposes.

THE COURT: Yes. 737 received for demonstrative purposes.

MS. WILKINSON: Okay.

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BY MS. WILKINSON:

Q. Now, can you hold this up to the jury and tell the jury how 737 -- which is 01, is it not?

A. Yes, it is.

Q. -- how 01 is different from 06?

A. The bagging itself is the first thing I'd start with. Just the item number, CT-4/21-01, I assigned a unique item number to each bag of evidence. That's the differentiation.

Second differentiation is the item itself is different

physically. It's slightly larger and it has unique characteristics. Also has two parts in this particular bag, also.

Q. Let's go on through the photographs, if we could, Mr. Kelly. Just push the side of the pen to clear your markings.

Now, this next item, next photograph, doesn't show any wood panel. Is that correct?

A. No, it does not.

Q. Okay. Let me zoom back out. All right. We'll go next in line. Does this show a wood fragment?

A. Yes, it does.

Q. And have you looked at that wood fragment before coming to court today?

A. Yes, I have.

Q. And do you recall what CT number you assigned to that wood

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fragment?

A. That would be CT-4/21-04.

Q. And have you compared 04 to 06?

A. Yes, I have.

Q. And what are your conclusions?

A. The items aren't anything similar to one another.

Q. All right. Now, this next photograph: Does it focus on any wood panel?

A. There is no particular focus on any wood panel.

Q. If we zoomed in on a certain portion, would we see a little bit of a wood panel?

A. Yes. There are what appears to be several small wood panels in the photo.

Q. Is that one there right in the center?

A. Yes, it is.

Q. Could you circle that for the jury.

And is that item different from 06?

A. Yes, it is.

Q. How is it different?

A. That item is much smaller than 06.

Q. Does it have -- what about the paint?

A. I'm sorry. I'm not sure I understand your question.

Q. Does it have the same red and yellow -- same amount of red and yellow paint on it?

A. It has red and yellow paint but not the same amount of

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each.

Q. What about the shape?

A. The shape is distinctly different, also.

Q. Come back out. If you could remove the markings again.

Now, here's the next photograph in the series. Does this show a wood panel?

A. Yes, it does.

Q. And is this anything like 06?
A. No, it is not.
Q. Do you recall what CT number you gave this item?
A. This is CT-4/21-05.
Q. And have you reviewed that item and its bag before coming to court today?
A. Yes, I have.
Q. And does it have a marking of "CT-4/21-05" on the bag?
A. Yes, it does.
Q. And does it compare at all to 06?
A. Nothing -- there is no similarity whatsoever.
Q. Now, let's go -- the next photo in line. Is this the one you've already shown us?
A. That's correct.
Q. And what item is depicted in this photograph?
A. Depicted in that item is 06.
Q. Next here we have what's -- what's depicted in this photograph?

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A. Depicted in that photograph is a metal frame.
Q. Is that the same frame we saw in the earlier photograph?
A. Yes, it is.
Q. And here: What's depicted in this next photograph?
A. A metal piece.
Q. Do you see that pink marking around there?
A. Yes, I do.
Q. Do you know who put that pink marking there?
A. No, I do not.
Q. Did you receive any instructions as to look for items that were marked with some kind of pink paint?
A. I was informed at one point some items were marked with pink, and they were items of possible -- some significant possibilities.
Q. Okay. Let's go on with the next one. This doesn't show

any wood panel, I take it?

A. No, it does not.
Q. And here: Why was this photograph taken?
A. I swabbed that particular item.
Q. Which item?
A. I'm sorry. The yellow item basically in the center of the photograph.
Q. How did you indicate that on the evidence log and on the photo log?
A. When I swabbed an item, an asterisk was placed in one of

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the columns on the evidence log.

Q. Do you recall what description you gave this item?
A. I believe it was labeled "cash" -- let me refer to it -- "metal cash box."

Q. Do you know whether that's a metal cash box?

Q. Do you know whether that's a metal cash box?
A. Not for certain, no.
Q. Why did you describe it that way?
A. I believe I asked somebody; but again, I don't recall exactly why.
Q. But you did swab that item?
A. I did swab that item.
Q. Is that indicated on your recovery lab -- log? Excuse me.
A. Yes, it is.
Q. Let's go to the next photograph. What's depicted here?
A. A piece of metal.
Q. Did you swab that piece of metal?
A. Yes, I did.
Q. So if we looked on your log, would that have a "no" next to the item but an asterisk indicating a photo was taken of the item?
A. That's correct.
Q. And here, what are we seeing in this photograph?
A. A piece of wood panel and fiberglass wood panel.
Q. And do you recall how these wood fragments were marked?
A. It was labeled Item CT-4/21-14.

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Q. Have you reviewed these items before coming to court today?
A. Yes, I have.
Q. Did you compare them to 06?
A. Yes, I did.
Q. Are they different?
A. They are very different.
Q. And finally, we have this item. Do you recognize that?
A. Yes, I do.
Q. Do you recall what CT number you assigned to that number?
A. Yes. That was 15.
Q. Have you compared 15 to 06?
A. Yes, I have.
Q. And are there differences between those two items?
A. Again, they are very different.
Q. What are the differences?
A. The amount of color on the panels and again the unique -- the size and the unique shapes.
Q. And is CT-4/21-15 shown in this photograph encased in a bag?
A. The item is in a bag, that's correct.
Q. Is that bagged marked CT-4/21-15?
A. In the photograph?
Q. No, the bag that you reviewed before coming to court today.
A. I'm sorry. Yes, the bag itself was marked after I recovered it.

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Q. Now, we've showed the jury all your photographs, and some of these are in plastic bags when you photographed them; is that right?

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A. That's correct.

Q. Was 06 in a plastic bag when you photographed it?

A. No, it was not.

Q. Did you remove it from its location before you photographed it?

A. No, I did not touch it before I photographed it.

Q. What did you do with it after it was photographed?

A. After I photographed it, I picked it up, it was placed in a bag, sealed, and then at some point the date, the item number and my initials were placed on it.

Q. Did you give the item to -- who did you give the item to?

A. I then gave the item to Agent Wilson.

Q. Now, why did you photograph some items in place and photograph other items in a plastic bag?

A. Normally, I tried to photograph the items in place. There were some items that were not photographed in place. They were photographed in bags, and that was incorrectly done.

Q. But Item 06 that we're interested in today was photographed in place?

A. Yes, it was.

MS. WILKINSON: We have no further questions, your Honor.

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THE COURT: Mr. Tigar.

MR. TIGAR: May I recover the photograph book that he has, your Honor?

THE COURT: Sure.

MR. TIGAR: Thank you.

Thank you, sir.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Mr. Kelly, a moment ago you said that -- my note says "before I photographed it." You didn't do any of these photographs; correct, sir?

A. I don't recall if I did any photographs or not.

Q. Did you have a camera?

A. There was a camera present with us, yes.

Q. My question is did you have a camera?

A. I don't recall having my own camera, no, sir.

Q. And you do recall testifying on a prior occasion that the photographer with you the entire time was Special Agent Wilson; correct?

A. That's correct.

Q. And is it your testimony now that you were in error on that prior occasion?

A. I may have been mistaken as far as my recollection of who took the photographs. That's correct.

Q. And with whom did you discuss the possibility that you

Ronald Kelly - Cross

might have been mistaken about who took the photographs?

A. I have spoke with Agent Wilson about this.

Q. So you and Agent Wilson have, what, compared notes on what happened that day so that you could try to figure out who took the pictures? Is that correct?

A. No, sir. We did discuss the issue, though.

Q. And -- well, what discussion did you have?

A. Again, a general discussion of the crime scene and the events that occurred.

Q. Now, was this after you had previously testified that he was the one that took the pictures that you had this discussion?

A. Yes, it was.

Q. Did anybody ask you to have the discussion?

A. No.

Q. You did it on your own?

A. We were present in -- at a time that a conversation occurred. I don't recall exactly when, sir. I'm sorry.

Q. Do you know where you were?

A. I was here in Denver.

Q. Were you in the courthouse?

A. No, sir.

Q. Were you at the command post?

A. Yes, sir.

Q. And did you know at that time that both you and Agent

Ronald Kelly - Cross

Wilson were going to be witnesses here?

A. Yes, I did.

Q. And did you understand that both you and Agent Wilson might be asked about who took the photographs?

A. Yes, sir.

Q. Had you received any instructions from anyone as to whether or not two witnesses who were going to appear in the same proceeding to discuss the same subject, both Government employees, should or should not be discussing their testimony with one another?

A. I'm sorry. We weren't discussing our testimony. We were reviewing materials that we both acquired at the crime scene or both utilized at the crime scene.

Q. Did you -- had you had any instructions before this conversation as to whether you and someone else who was going to be a witness should have a discussion concerning the subject matter of the testimony that both of you would be expected to offer?

A. I was not given instructions that I was aware of, no.

Q. And how long have you been an employee of the Federal Bureau of Investigation, sir?

A. 19 years.

Q. And during that time, how many times have you offered testimony in court?

A. Approximately 10 times.

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Q. And are you aware of any rule concerning whether or not people, two people, who are going to offer testimony on the same subject should be discussing the subject matter of that testimony before they come to court?

A. I'm sorry. Would you please repeat the question.

Q. Yes, sir. Are you aware of any rule that deals with whether or not two people who are going to be giving testimony on the same subject should be discussing that testimony before they come to court?

A. No, I'm not.

Q. That's never come up. Is that your testimony, sir?

A. I'm -- my response was I'm not familiar with that rule, sir.

Q. Okay. Can you recall when you had this discussion with Agent Wilson?

A. I don't recall the exact date.

Q. Can you give me an approximate date, sir?

A. Approximately a month and a half or two ago.

Q. And was that the only conversation that you had with Agent Wilson on this subject?

A. The conversation I had with Mr. Wilson concerned -- I'm sorry. Would you please repeat your question one more time.

Q. Yes, sir. Was the conversation you're telling us about the only conversation that you have had with Agent Wilson about the evidence-recovery process of the 21st of April, 1995?

Ronald Kelly - Cross

A. I have -- of course, on the day of the recovery --

Q. Yes, sir.

A. -- of the recovery, I spoke with him then. I have spoke with Mr. Wilson on several occasions in the past several months, too; but as far as discussing our testimony, our conversations did not address our testimonies. Our conversations addressed our review of evidence that we had in front of us.

Q. And did that evidence include matters concerning this item 06?

A. 06 may have come up in the conversation. I don't recall specifically, though.

Q. And did the evidence include photographs that were taken, evidence that you were reviewing -- photographs that you had taken?

A. The evidence we were reviewing included photographs.

Q. During those discussions, how many times did you talk about the issue of who took the photographs?

A. I don't recall how many times, but the matter did come up.

Q. And when was the most recent such conversation that you can recall in which you were reviewing the evidence with Agent Wilson together?

A. It would be at least several days ago.

Q. And where were you when you and Agent Wilson were having this discussion several days ago?

Ronald Kelly - Cross

A. This would have been at the beginning of the week, and it would have been in the command post.

Q. Was anyone else present other than you and Agent Wilson when you were having these discussions a few days ago?

A. Not that I recall, no.

Q. During any of the discussions you had with Agent Wilson after the 21st, was anyone else present other than you and Agent Wilson?

A. Previous discussions from several months ago may have involved some other individuals; that's correct.

Q. Who were the other individuals in these previous discussions several months ago, sir?

A. Again, I reviewed and prepared for this trial at the command post here in Denver, and that occurred in the -- I'm sorry. That occurred at the command post. Excuse me.

Q. Well, who was present, sir?

A. Oh, I'm sorry. I don't recall who was present with my discussions with Agent Wilson about that. It was, again, a casual conversation with Agent Wilson as we reviewed some of the material we had.

Q. Do you remember if any Government lawyers were present during any of these conversations?

A. Not the conversations I had with Mr. Wilson, no. Those conversations were in -- just between Agent Wilson and I on those times with no other Government witnesses participating

Ronald Kelly - Cross

that I recall.

Q. Well, what was the purpose of having these conversations with Agent Wilson?

A. Again, we were reviewing photos and other materials concerning the recovery.

Q. And was one purpose to see how your recollections differed?

A. No, sir.

Q. Now, sir, you testified that you came to the lot on the 21st. Is that right?

A. That's correct.

Q. And during this recovery process, were you wearing gloves?

A. Yes, I was.

Q. What kind of gloves were you wearing?

A. Disposable latex-type gloves.

Q. And are those provided by the FBI, or are they provided by -- were they provided by other people on the scene?

A. They were provided by the FBI, and those are gloves that I brought with me.

Q. And are -- do they have a powder substance in them, or -- to help you get them on and off easier, or are they powderless?

A. The ones I use are powderless.

Q. Were you aware that other people at the crime scene had gloves that had powder in them?

A. I was not aware of that.

Q. Do you know that there are latex gloves that have powder in

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them?

A. I know that's a type of latex glove; that's right.

Q. Are you familiar, based on your 19 years of experience, what substance is used to powder the inside of latex gloves?

A. Talc, I believe.

Q. Are you aware that calcium carbonate is also used to powder the inside of disposable latex gloves?

A. I'm not aware of that.

Q. Now, when you arrived at the parking lot, you saw some pink paint on the ground. Is that fair?

A. Yes.

Q. And you had been told something about that pink paint. Is that right?

A. Yes.

Q. What had you been told about the pink paint?

A. I was told the pink paint was marking some items, some significant items that may be recovered at a later time.

Q. Who told you that?

A. I don't recall who I heard that from.

Q. Where did you hear it?

A. At the crime scene itself.

Q. That is to say, right at the parking lot?

A. I don't recall -- I don't recall where again. It was just in the -- at the crime scene.

Q. Now, you arrived in Oklahoma City, sir, the morning of the

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20th of April. Correct, sir?

A. That's correct.

Q. You spent the night of the 19th in Little Rock, Arkansas. Is that right?

A. Yes, I did.

Q. And why did you -- what was it that happened that caused you to stop in Little Rock, Arkansas, overnight?

A. Bad weather.

Q. Weather that prevented your aircraft from landing at Will Rogers Airport, Oklahoma City; correct?

A. Prevented us landing at Oklahoma City; that's correct.

Q. Yes. And Will Rogers Airport just happens to be the name of the airport. You knew that?

A. Thank you.

Q. All right. Well, I wasn't trying to mislead you, sir.

So what time did you all get there on the 20th?

A. In the a.m. I don't recall exactly what time.

Q. And was it clear from what you could see on your way downtown that it indeed had been raining the night before?

A. I'm not sure I follow your question.

Q. Well, was it wet, the ground? That's what I mean.

A. I don't recall if it was still wet or not.

Q. But in any event, whatever the weather was, your plane

wasn't able to get into Oklahoma City. Correct?

A. That is correct.

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Q. Now, did you then start attending some briefings about what you were to look for and how you were to do it?

A. There was a morning briefing; that's correct.

Q. That was done by Special Agents Williams and Hahn; is that right?

A. I don't recall who gave the briefings any particular morning.

Q. Well, the morning of the 21st. You don't remember who gave the briefing?

A. No, I don't.

Q. Were you briefed on the 20th or the 21st by Special Agents Williams and/or Hahn?

A. Not that I recall by date, no.

Q. Now, Mr. Burmeister was with you; is that right?

A. Yes, he was.

Q. And Mr. Burmeister is a chemist from the -- he's a special agent. Right?

A. Yes, he is.

Q. And he is from the FBI Laboratory; right?

A. Yes, he is.

Q. And was it he that asked you to go with him to help him?

A. My supervisor directed me to go, and I accompanied

Mr. Burmeister there.

Q. And who was your supervisor, sir?

A. Roger Martz.

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Q. Mr. Martz. Okay. Now, you came prepared to take swabbings; correct?

A. That's correct.

Q. Both dry and wet. You've testified about that on direct examination; right?

A. Yes.

Q. And the purpose of those was to identify potential residues and to identify background levels. Is that right?

A. It would be more accurate to say to collect residues and collect background, yes.

Q. Okay. To collect residues and to collect background.

Okay. And the residue -- that means, what, residue of a blast? Right?

A. Chemical residues.

Q. And when you got to that parking lot, did you see that a number of automobiles had caught fire and burned?

A. Yes. That was quite evident.

Q. And what does it mean to swab for background levels?

A. Swabbing for background levels would be taking samples away from your area of interest to see what levels of chemicals would be present.

Q. Now, you testified on direct examination that you used a

Q. Now, you testified on direct examination that you used a technique where you collected evidence and put it into a plastic bag. Do you remember that?

A. I'm sorry. Please repeat the question.

Ronald Kelly - Cross

Q. Yes. You collected evidence and put it into a plastic -- into plastic bags. Is that right? Ziploc bags?

A. On the day of the 21st?

Q. Yes, on the day of the 21st. Is that right?

A. Yes, I did.

Q. And who made the decision to use plastic bags?

A. I discussed that with Agent Burmeister, and it was his decision.

Q. Yes, sir. Are you aware of any chemical -- those are polyethylene bags?

A. Ziploc polyethylene bags.

Q. Now, Ziploc is permeable to certain items that are found in commercial explosives -- correct -- or do you know that one way or another?

A. Yes, I do.

Q. And what is the answer?

A. Yes, there are some.

Q. And how did you learn that?

A. Through my --

Q. Pardon?

A. Through my experience at the laboratory.

Q. Now, you kept a diary, did you not, of your work while you were in Oklahoma City. Is that correct?

A. I kept personal notes in my day planner; that's correct.

Q. And you also took some -- you also made some notes, did you

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not, concerning the photographs that were taken?

A. I'd have to see what notes you are referring to there, sir.

Q. All right, sir. I'm going to show you what's been marked as Defendant's E53.

MR. TIGAR: May I stand next to the witness, your Honor?

THE COURT: Yes.

BY MR. TIGAR:

Q. Page 1, and I'm referring to these Bates' stamped pages. That's from your Daytimer. Correct?

A. That's correct.

Q. Page 2 is from your Daytimer; correct?

A. Yes.

Q. The writing on these pages is yours; correct?

A. Yes, it is.

Q. Page 3 is from your Daytimer?

A. Yes.

Q. The writing is yours?

A. Yes, it is.

O. Page 4 from your Davtimer, the writing is yours?

21 - Page 5 from your Daytimer, the writing is yours; correct?
A. Yes, it is.
Q. Page 5 from your Daytimer, the writing is yours; correct?
A. Yes, it is.
Q. Pages 6, 7 and 8: Do you -- do you know what those are?
A. Yes, I do.

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Q. They're typewritten versions of what's on your Daytimer. Correct?
A. That is correct.
Q. Now, page -- the next, 9, 10, 11, 12, 13, 14, and 15 are copies of the evidence-recovery log; correct?
I'm just down to 15, sir.
A. Okay.
Q. Is that right? That's what that is?
A. Those are, yes.
Q. Okay. And what -- and page 16, the circled numbers: Is that your writing?
A. Yes, it is.
Q. And do you know who made the marks down here: F number, so forth and so on?
A. I did that, also.
Q. Okay. So that's yours.

MR. TIGAR: We offer E53, your Honor.

MS. WILKINSON: We have no objection.

THE COURT: E53.

MS. WILKINSON: Your Honor, I'm sorry. We do, because it contains notes -- portions of it contains notes about other testimony he's not testified to, other days of what he did in Kansas and things like that; so I would object to those pages.

MR. TIGAR: All right. Your Honor, we'd be happy to redact whatever the Government wants, provided we could have in

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the pages 1, 2 --

MS. WILKINSON: 2 has some of those materials we're talking about.

MR. TIGAR: And 16.

MS. WILKINSON: We'd object to page 2 because it has -- let me show Counsel.

THE COURT: All right.

MR. TIGAR: Then, your Honor, we would redact, then -- I see what Government Counsel is talking about -- the entries that begin with -- on page 2 with the words "flew to."

MS. WILKINSON: It's the 22d in his Daytimer. We'd object to anything from the 22d down.

MR. TIGAR: From the 22d on, we'd agree to redact those and redact out all of page 3, all of page 4, all of page 5, all of page 6, because the writing is legible. We don't need the typewritten version, and then --

MS. WILKINSON: All of page 7 and 8.

MR. TIGAR: Excuse me. All of page 7 and 8.

MS. WILKINSON: And the rest is fine.

MR. TIGAR: And then the rest is fine, your Honor. So with those changes, which I can make immediately, your Honor, with -- if Counsel and I can have a moment with a pair of scissors, then the exhibit as it comes in would be exactly what we've agreed to.

MS. WILKINSON: We don't need to do the cutting right

Ronald Kelly - Cross
now.

MR. TIGAR: I'm not going to show any of it to the jury, your Honor. That has not been agreed to.

MS. WILKINSON: Okay.

THE COURT: Then E53 is received with agreement on redaction.

MR. TIGAR: Thank you, your Honor.

BY MR. TIGAR:

Q. Now, sir, I'm going to show you page 16 of what's been received now as E53.

Now, this is a copy of the evidence-recovery log or a page from it; correct, sir?

A. That is a document I prepared their a copy of the evidence log.

Q. Right. And you went through, then, and got Frame No. 5 -- well, let's just look. Here's the top. Here's Item 01 -- correct?

A. Yes, it is.

Q. -- that we've been talking about. Wood panel, yellow and red; correct?

A. Yes.

Q. And you put F No. 5. What does F No. 5 refer to?

A. Actually, that's corrected. That should be F1. The 1 is not very clearly stroked through the 5, but that should be F1.

Q. Oh, that's F1?

Ronald Kelly - Cross

A. Yes.

Q. And then is a 5 written over the 1?

A. I believe I wrote the 5 first, realized I was in error, then wrote the 1 on top.

Q. All right. And what does the 5 mean then?

A. The 5 is the frame number from the back of the photograph in the book.

Q. And now down here, 04, I see an F, and what is that entry there? F something?

A. 2.

Q. F No. 2?

A. Yes.

Q. And you wrote that?

A. Yes, I did.

Q. And what did you intend to designate when you wrote F No. 2?

A. The F2 is the -- excuse me -- photo log entry for that item.

Q. So F2, we're supposed to understand, refers to what Agent Wilson had prepared showing you now, E5, F2. Correct? I can zoom in and see Frame No. 2, wood panel, and that's No. 04. Correct?

A. That is correct.

Q. So the F2 refers to Frame No. 2; correct? Is that right?

A. The F2 on my -- on the evidence log refers to Frame 2 from

Ronald Kelly - Cross
this photo list.

Q. From this photo list that is signed by Agent Wilson; correct?

A. That is correct.

Q. All right. Then after you wrote F2, you went across and you wrote a 7 with a circle. Correct?

A. Yes, I did.

Q. Well, what does 7 with a circle refer to?

A. That refers to the frame number on the back of the photograph.

Q. So that these numbers 5, 2, 3, 4, 5, 6 -- well, this -- up here, the top, you wrote a 1 first and then -- or a 5 first? I'm sorry.

A. I wrote the 5 first and then struck through with a 1.

Q. So 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 refers to the numbers on Agent Wilson's log; right?

A. On the photo log.

Q. On the photo log that we've just taken a look at; correct?

A. Yes.

Q. And then you went back and correlated that to the actual frame numbers as shown on the pictures themselves. Is that right?

A. I'm not sure of the exact sequence, but the column to the right are the frame numbers from the back of the photographs. That is correct.

Ronald Kelly - Cross

Q. And is it fair to say, sir, that there is simply no rational correspondence between Agent Wilson's listing of the frame numbers at the beginning of his photo log and the way in which the frames here, as you've circled them, actually appear?

A. There is an obvious error on his photo log, yes.

Q. And again, you don't remember who took the pictures; correct?

A. I don't recall who took all the pictures. My recollection was that Agent Wilson was the photographer.

Q. Your recollection is that he was the photographer?

A. I'm sorry. The best my recollection is that he was the photographer, but I could be mistaken, yes.

Q. So -- all right. Now, in a prior proceeding, you testified under oath he was the photographer? Right?

A. Yes. I did.

... 100, 1 and.

Q. And then you came in this morning and testified that you weren't sure; correct?

A. That's correct.

Q. And now you're saying that to your best recollection, he was the photographer; rights?

A. No, I'm still saying I'm not sure. The best my aging memory can tell me, it was Agent Wilson, but again, I could be incorrect. There could be other persons that took photographs.

Q. All right. Now, I want to start with these pictures. And this is, I represent to you -- it's got a 4 on it. That's a

Ronald Kelly - Cross

Bates' number, but it's also the frame number that's on the back. Right?

A. I'd have to see the book to make that correlation, sir.

Q. Okay. Do you see it there?

A. Yes, I do.

Q. I'm going to turn it back over. So this is 4. Correct? What are we looking at here?

A. There is a yellow object in the center of a frame, picture.

Q. Okay. Did you recover that object?

A. No.

Q. Okay. So this object does not appear on any evidence log; is that right?

A. No, it does not.

Q. Okay. And do you know why a picture was taken of it and preserved in a book if it didn't appear on an evidence log?

A. No, I did not.

Q. Do you remember directing the picture be taken?

A. I don't recall directing that picture, no.

Q. Going to turn the page. Here is something that's marked on the front 005. Watch. I'm going to turn over. This is Frame No. 5. See that?

A. Yes, I do.

Q. Now, this, you testified, is a picture of the item 01. Correct?

A. That is correct.

Ronald Kelly - Cross

Q. And that is called -- it's called Frame 5 on here and it's called Frame 1 on Agent Wilson's log; correct?

A. Correct.

Q. Now, here are some of this pink spray we've been talking about before; correct?

A. Could you move the photograph up a little, please?

Q. Sure.

A. There we go.

Q. Does that appear to be the pink spray?

A. That appears to be pink paint, yes, sir.

Q. All right. Does it appear to be spray can paint?

A. I can't tell that from the photograph.

Q. All right. It doesn't -- well, does it appear to be sprayed on, or brushed on, or can you tell?

A. I can't tell from the photograph.

Q. That day when you were in the photograph, could you tell whether the paint you saw, the pink paint, appeared to be sprayed on, or brushed on?

A. I can't recall.

Q. Okay. We'll look at some others in a bit.

Here is the item, and we can see 01. Correct?

A. Yes.

Q. We can see the initials "RLK." Is that right?

A. Yes, sir.

Q. Now, why did you choose to put this one into the bag and

Ronald Kelly - Cross

write your initials on it and then put it down to be photographed? What made you choose that method of recovery?

A. I don't really recall, sir.

Q. Was that the correct method of recovery?

A. That was not the correct method.

Q. And at that time you had been in the FBI how many years, sir? 17?

A. 19 years. I'm sorry. At that time?

Q. At that time.

A. Your math sounds about right. About 17.

Q. And was Mr. Burmeister present with you that day in the parking lot?

A. Not during the collection of these items. No, he was not.

Q. Now, I'm going to turn. And this is labeled 006 there. Turn it over on the back. See the number 6?

A. You have your -- I'm sorry. There you go. Yes.

Q. 6. Okay.

Now, what's this?

A. You have your zoom on right now.

Q. I'm sorry. Let me pull my zoom -- the zoom out. See what this is.

A. I'm sorry. Could you repeat your question.

Q. Yes. This is Frame 6. Correct?

A. Yes, it is.

Q. And what is it?

Ronald Kelly - Cross

A. There are bricks present, metal frames, wood block, appears to be a small piece of plastic, some other miscellaneous items.

Q. And did you collect any pieces of wood panel from this area? Did you see any pieces of wood panel there?

A. There are no pieces of wood panel in the photograph.

Q. Now I'm going to show you what's been received as page 16 of E53. Is that your circled No. 6 there?

A. Yes, it is.

Q. Does it correspond to this item "pieces of wood panel"? Is it in the same line as "pieces of wood panel"?

A. It's on the same line, yes, sir.

Q. Well, do you see any pieces of wood panel in the frame that's numbered 6?

A. No, there are not.

Q. Can you tell the jury, please, how the number 6 in your writing came to be on this log if the frame numbered 6 doesn't have any pieces of wood panel on it?

A. Omitted on the line entry was the item of plastic, which is also contained in 02 and that is pictured in the photo.

Q. Are you telling the jury that this evidence log, when it says "pieces of wood panel" actually should "read piece of wood panel and piece of plastic"?

A. I did not maintain this; but yes, that would be a more accurate description.

Q. Well, you agree with me there are no pieces of wood panel

Ronald Kelly - Cross

visible in this photograph; correct?

A. Not in the photograph, sir.

Q. All right. And the pieces of plastic are where? Is this a piece of plastic? Where is --

A. I'm sorry. I don't see you pointing at anything. Would you like me for me to circle it?

Q. With the light pen, just show me where the plastic is.

That's that piece right there; correct?

A. That is correct.

Q. Now let's take a look at the next one. And this is -- I'm going to show you the back of it, sir. You can verify. That's No. 7. Correct?

A. That's correct.

Q. Okay. And we're looking here, and we should find that there is a picture of a wood panel there. Correct?

A. Yes, there is.

Q. On your log. Okay. Now, this is another piece of wood panel that's in a bag; right?

A. Yes, it is.

Q. Now, this piece of wood panel doesn't have any writing on it. The bag doesn't have any writing on it. Correct?

A. Not as pictured on the photograph. I see no writing on it.

Q. All right. And is it your memory that for this one, you picked it up, put it in a bag, set it back down on the ground but didn't put any writing on it? Is that what happened? Is

Ronald Kelly - Cross

that what happened?

A. I can only tell you what's evident in the photograph.

There is no writing on the bag.

Q. Do you have any independent memory of what you did that day?

A. I don't have an independent recollection of that action.

Q. Is this the proper way to document the recovery of evidence at a crime scene?

A. Again, no, it is not

A. Again, NO, IT IS NOT.

Q. And in terms of a scale, is it -- is it more improper to have a picture of it without any writing on the bag, or not, or the same?

MS. WILKINSON: Objection, your Honor.

THE COURT: Sustained.

BY MR. TIGAR:

Q. Now, sir, I'm going to turn to No. 9, Bates' stamp No. 9. And we can see that that is photograph No. 9. See that, sir?

A. Yes, I do.

Q. Now, here, the item is a piece of wood panel; correct?

A. Yes, it is.

Q. And this one is not bagged; correct?

A. No, it is not in the photograph.

Q. All right. And why did you decide to change from photographing after bag to photographing before bag?

A. This is the proper procedure to photograph an item in place

Ronald Kelly - Cross
before it's recovered.

Q. I asked you why did you decide to change.

A. I'm sorry. There is --

Q. I'll take this off now. I just want to look through it some more.

Why did you decide to change from bagging to not bagging?

A. Again, the previous instances you pointed out were mistakes.

Q. And you didn't want to be making that mistake anymore; correct?

A. That would be a logical assumption, yes.

Q. Okay. Well, let me show you photograph No. 17. Let's verify. There we are, and here on the back is 17. Correct?

A. Yes, it is.

Q. Now, here, does 17 indicate that this is the very last picture that was taken; that is to say, that this picture was taken after the picture of 06?

A. Yes, it is.

Q. But here, we have it in a bag; right?

A. That's correct.

Q. So did you decide to recover some and put them in a bag and then changed your mind that that wasn't the right procedure, and then took the pictures of them without the bag for a while and then put them back in the bag?

Ronald Kelly - Cross

MS. WILKINSON: Objection to compound question, your Honor.

THE COURT: Overruled.

THE WITNESS: If I could address, there were several questions --

BY MR. TIGAR:

Q. Sure. What is it that you decided to do about changing the

way in which you were photographing these items?

A. There may have been reasons why items were not photographed in place. One reason would be if I had --

Q. Excuse me, sir. Not what may have been. Okay? I want you to give us your memory as you sit there today.

A. I have no --

Q. What do you remember about why you changed?

A. I have no independent recollection of why I would have changed or why a particular item was photographed before or in a bag.

Q. Now, have you had discussions with anyone about why the changes took place?

A. No.

Q. Now, sir, I'd like to show you what's been marked here as defendant's -- excuse me -- as page 15. And I'll turn it over. You can verify that that's Frame 15. Correct?

A. Yes, it is.

Q. Is that right? Okay. Now, here we see an item that was a

Ronald Kelly - Cross

metal frame. You took a swabbing somewhere in here. Correct, sir?

A. I took a swabbing on the metal piece. Yes, sir.

Q. And was it the metal piece that had the paint on it, or another metal piece?

A. If I may circle the piece, I can indicate to you.

Q. Yes, please do.

Now, we see on here this paint. This paint on the ground. Correct?

A. Appears to be paint.

Q. Can you tell from this picture whether that was painted on, or sprayed on?

A. No, I do not know.

Q. And do you have a memory from that day as to whether it appeared to be painted on, or sprayed on?

A. No, have I no independent recollection of that.

Q. All right. Now, this -- you see this Pennzoil can up here. Right? See the Pennzoil bottle?

A. Yes, sir.

Q. And that was in that position at the time that you took your swabbing; correct?

A. I don't have an independent recollection of that.

Q. Now, sir, this is the Frame 10. Do you remember that, or do you want me to show you the back?

A. If you'd show me the back so I could clarify that.

Ronald Kelly - Cross

Q. This says 10. I'm going to show you -- there. You see the 10?

A. Yes, I do.

Q. Okay. Now, that, you've told us, is what you identified as a picture of 06, the wood panel. Correct?

A. Yes, sir.

Q. And the wood panel is off over here to the side where my finger is pointing. Right?

A. Yes, it is.

Q. Now, would it be fair to say, sir, that for every other wood panel of which you have a picture, the item that you're photographing is in roughly the center of the picture?

A. Not necessarily.

Q. All right. Here's 12. Item is in the center; correct?

A. Well, sir, if you'd start at the beginning and we could review each one.

Q. All right. Let's start at the beginning.

This we established, No. 4, we don't know what this is. Right?

A. No, we don't.

Q. Here's No. 1; correct?

A. Yes.

Q. In the center?

A. Yes, that's the way -- I had that -- I effected that picture to be taken with the item in the middle.

Ronald Kelly - Cross

Q. Here is a picture that is labeled "wood panel" but has no wood panel on it; correct?

A. That is correct.

Q. But it does have a piece of plastic; correct?

A. Yes, it does.

Q. Here is 07. There is the wood panel and it's in the center. Correct?

A. That one, it is.

Q. Do we know what this is?

A. That's a general shot which encompasses several wood panels, and they are throughout the photo.

Q. Right. And in this general shot, you didn't recover any of those wood panels, did you?

A. Actually, there is one wood panel pictured in there that I did recover.

Q. And what evidence number in your 01 through 15 is that?

A. I'd need to refer to the log, I believe. It is --

Q. All right. I'll put the log up. Go ahead.

A. I'm having a hard time reading it at that magnification.

MR. TIGAR: May I approach, your Honor?

THE COURT: Yes.

THE WITNESS: I'd request to check the item itself, but I believe you'll find that item in CT421-10.

BY MR. TIGAR:

Q. CT421-10. All right?

Ronald Kelly - Cross

A. If I could see that, I could confirm that for you.

MR. TIGAR: Well, I certainly don't have it.

MS. WILKINSON: We have it. We can mark it as a

Government exhibit for demonstrative purposes.

MR. TIGAR: For demonstrative purposes, yes.

BY MR. TIGAR:

Q. And we'll put the picture back up in the meantime, sir.

MS. WILKINSON: It's Government's Exhibit 2118 for demonstrative purposes.

BY MR. TIGAR:

Q. You're testifying, sir, that that which is CT-4/21-10 is what we're seeing in Frame No. 8; is that right?

A. There is an item in your photograph that can be found in 10. That is correct.

Q. All right. Now -- now I'm going to show you your log again; and there is no Frame 8 on here, is there, sir?

A. No, there is not.

Q. So whatever it is that's depicted here in Frame No. 8, your accounting of Frame No. 8 didn't make its way onto your identification system that you prepared; is that correct?

A. That's correct.

Q. All right. Here's Frame No. 9, sir. Wood panel, piece in the center. Correct?

A. That is right.

Q. Here's -- now, here's No. 10. Right?

Ronald Kelly - Cross

A. Yes, it is.

Q. And our wood panel, No. 10, which is 06 -- right -- is 06 -- right?

A. That's correct.

Q. And that's over at the side; correct?

A. Yes, it is on the side -- in the side on that photograph.

Q. And the center -- the item that appears to be centered is this metal piece; correct?

A. That appears to be more in the center, yes.

Q. Now, 11: Is that a picture of that same metal piece we were just looking at?

A. Yes. In that one, that's centered in the photograph. You're correct.

Q. Here's 12. That's the piece of evidence -- correct -- I'm pointing to?

A. That's the item I swabbed. That's correct.

Q. And that's centered. Right?

A. Yes, it is.

Q. Now, 13 is a general shot; correct?

A. I'm not sure why that photograph was taken.

Q. Well, whether or not it -- that's why it was taken. You labeled it as "gen. shot." Correct?

A. Yes, I'm sorry. That's a correct label for that photograph.

Q. So that's correct, general shot.

Ronald Kelly - Cross

Then 14 is what you call the cash box, and you took swabs from it: right?

CHASS FROM 10, right?

A. That is correct.

Q. And that's centered; correct?

A. Yes, it is.

Q. And in 15, it's this metal piece we're interested in. Correct?

A. That's correct.

Q. And that's centered; correct?

A. Yes, it is.

Q. And 16: It this metal piece or this metal piece -- or excuse me -- wood piece. Which one are we thinking about for frame 16?

A. I believe both those pieces are recovered.

Q. All right. And the shot -- this piece here I'm looking at is in the center; right?

A. Yes, it is.

Q. And the other one is right next to it; correct?

A. Above it, yes.

Q. Finally, No. 17, and that's centered. Correct?

A. Yes, it is.

Q. Now, looking back at No. 10, do you see the pink color over on these bricks, sir? Do you see a pink color?

A. I can't clearly see that on the monitor, no.

MS. WILKINSON: Mr. Tigar, would you like to use this

Ronald Kelly - Cross
one?

MR. TIGAR: Oh, good. Thank you.

BY MR. TIGAR:

Q. We can hold this up for the jury.

Is that pink coloration there? Can you see that on the picture?

A. Appears to be pink color there, yes.

Q. Okay. And is this pink color also that's on the ground there?

A. Yes, I can see the pink color.

Q. You can see it. And did that resemble the pink -- thank you -- does that resemble the pink that you had been told would mark items of evidence as you saw it that day?

A. I don't recall that they referred to a pink color; just that items would be marked.

Q. Be marked. Okay. So you weren't told about a pink color; correct?

A. Not necessarily about color. I don't recall that.

Q. As you walked to the crime scene on the 20th, had you observed a lot of pink circles?

A. Yes. That was quite evident.

Q. That was. For example --

THE COURT: Excuse me just for the record. 665 was what was just now displayed?

MS. WILKINSON: Yes, your Honor.

Ronald Kelly - Cross

THE COURT: Okay.

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

I'm sorry, your Honor. My records show that Government's Exhibit 736 is in.

THE COURT: Well, we'll check.

THE COURTROOM DEPUTY: No.

MR. TIGAR: Not in?

THE COURTROOM DEPUTY: No, it is not.

THE COURT: I don't show it from the official record.

MR. TIGAR: I've already showed it to one witness by error, your Honor. I apologize. May I show it to the witness?

MS. WILKINSON: May I just ask Mr. Ryan? I believe this is the item recovered from Mr. Sprague.

We have no objection. If it's not marked --

MR. TIGAR: My recollection is it came in through Mr. Sprague. 736.

THE COURT: It's in now.

MR. TIGAR: Thank you, your Honor.

BY MR. TIGAR:

Q. Is this sort of pink line here the sort of thing you remember seeing?

A. Yes, I do.

Q. There were a lot of those at the crime scene; right?

A. There were a number of them.

Q. And -- and you recognize that person; correct?

Ronald Kelly - Cross

A. That's blurry on my monitor.

Q. Okay. Well, doesn't matter.

Now, then, let's look at 06. Now, your testimony, sir, is that when you recovered it, it was lying like this and one edge of it was resting on that piece of metal; correct?

A. I don't recall mentioning the metal, but I recall saying it was resting.

Q. Well, was it resting on a piece of metal?

A. I don't have an independent recollection of that; just what I can observe from the photograph there.

Q. So you don't remember. Is that correct?

A. Not an independent recollection; correct.

Q. All right. And this scene here that we're seeing around here: What is -- what is that on the ground? That's not the natural condition of the parking lot, is it?

A. I'm not aware of what the natural condition is, sir.

Q. Now, the portion of the parking lot that you were searching that day where this was recovered is adjacent to a restaurant called the Athenian; correct?

A. I'm not aware of that.

Q. Was it adjacent to or next to a brick building?

A. I do recall that.

Q. And as you looked up, could you see that bricks had tumbled down from a wall of the building and that a portion of the roof had caved in? Do you remember that?

Ronald Kelly - Cross

A. I recall some building damage and a pile of bricks near that location.

Q. And is -- from your recollection, what is this stuff on the ground here? Is it dirt? Is it rubble? Is it cement? Is it -- what is it?

A. I don't know.

Q. Did you care?

A. Again, the purpose of the photograph would help me recognize some things there; but again, at the time, that did not cross my mind, no, sir.

Q. Well, you -- did you intend at the time you collected this item that it was going to be tested for any chemical residues that might be present on it?

A. Yes.

Q. Did you take any samples from the ground upon which a portion of it was resting -- or was a portion of it resting on the ground?

A. It appears so, yes.

Q. Do you have an independent recollection as to whether a portion was resting on the ground?

A. Yes, I do.

Q. Good. Now, did you take any tests or -- did you take any samples from the portion of the ground on which it was resting to determine what chemical substances might be present in the environment where it had been?

Ronald Kelly - Cross

A. No.

Q. Had you been given any instructions from Mr. Burmeister or others about the wisdom or necessity of taking samples from places where things were found in order to make comparisons about background levels of chemicals?

A. In general directions, yes. Specific directions on this particular item of evidence, no.

Q. For this particular item of evidence, you used your own judgment and discretion as to how you would recover it; correct?

A. Yes.

Q. Nobody else told you; right?

A. Other than the general instructions I had received from Mr. Burmeister earlier.

Q. All right. Mr. Burmeister gave you general instructions?

A. That is correct.

Q. What general instructions did Mr. Burmeister give you about recovering items and preserving any traces of chemicals that might be present in the environment from which they came?

A. On that particular -- on that particular day, none.

Q. You're talking about the 21st?

A. Yes, sir.

Q. Had you ever worked a crime scene before in which you had had to recover items that had been resting on some other medium or substance that might be a place where chemical residues

Ronald Kelly - Cross

would be present?

A. Could you repeat the question one more time.

Q. Yes. Have you ever worked a crime scene before where you were collecting things that were going to be tested for chemical residue?

A. Not that I recall offhand.

Q. So as of the 21st of April, had you had any training at all or instructions at all about how to recover items of evidence to determine what chemical residues might be present in the environment from which they came?

A. I detect a couple questions there. I did receive training, yes.

Q. All right. And did you receive training in how to collect items from an environment or a place where there might be chemical residues that would get onto things that were in that place?

A. I'm not quite sure if I understand your question. I've received training in the collection of evidence. I'm not sure that answers your question, though.

Q. Did the training you received in the collection of evidence include training about establishing background levels?

A. I don't recall that being in the training, no.

Q. You know what background levels are, don't you, sir?

A. Yes, I do.

Q. So you didn't have any training in that?

Ronald Kelly - Cross

A. I don't recall my training involving that right now.

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

THE COURT: Yes.

Perhaps this would be a good time to take a recess.

Would it?

MR. TIGAR: Thank you, your Honor. I just have a few more minutes, if I can collect my notes.

THE COURT: All right. You may step down now.

Members of the jury, we'll take our recess, during which, just as with all recesses, please avoid discussion about the case or anything connected with the trial with other jurors and all other persons and continue to avoid anything outside of our evidence that could relate to the issues to be decided.

We'll -- we're going to go till 1:00 today, as has been our Friday custom. This is Friday. We remember that. And we'd like to go forward without another break; but if we need to, we'll take another break, so we'll just see how it goes.

You're excused now, 20 minutes.

(Jury out at 10:27 a.m.)

MR. TIGAR: May I approach, your Honor.

THE COURT: Yes.

(At the bench:)

(Bench Conference 95B2 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: All right. We'll recess. 20 minutes.

(Recess at 10:29 a.m.)

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 28th day of November, 1997.

Paul Zuckerman

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY LYNN NICHOLS,

Defendant.

(Trial to Jury: Volume 96)

AA
Proceedings before the HONORABLE RICHARD P. MATSCH,
Judge, United States District Court for the District of
Colorado, commencing at 10:50 a.m., on the 28th day of November,
1997, in Courtroom C-204, United States Courthouse,
Denver, Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
Produced via Computer by Paul Zuckerman, 1929 Stout Street,
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11264

APPEARANCES

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

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

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

* * * * *

PROCEEDINGS

(Reconvened at 10:50 a.m.)

THE COURT: Be seated, please.
Counsel, will you approach.

(At the bench:)

(Bench Conference 96B1 is not herein transcribed by court
order. It is transcribed as a separate sealed transcript.)

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(In open court:)

(Jury in at 10:54 a.m.)

THE COURT: All right. Members of the jury, we'll
proceed; and as I indicated, we'll see how it goes. And if you
feel a need for another recess at some point, or an early
recess, we'll do so.

So let's return the witness

So let's return the witness.

All right. You may continue your examination,

Mr. Tigar.

(Ronald Kelly was recalled to the stand.)

CROSS-EXAMINATION CONTINUED

BY MR. TIGAR:

Q. And, Agent -- Mr. Kelly, excuse me. Mr. Kelly, it is the case then that you did not take any soil samples or other samples of any kind from the ground underneath or around what you have numbered as 06; is that correct?

A. Yes.

Q. Now, I have these photographs out of order. But do you remember looking at the back of each frame? Do you remember looking at the backs of these photographs?

A. Yes.

Q. And will you tell the jury who is designated as the photographer on the back of each of these.

A. Agent Wilson.

Q. And that when we see each of these, we mean each of those

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Ronald Kelly - Cross

that are in E5 that's now been received in evidence; is that correct, sir?

A. That's correct.

MR. TIGAR: I have no further questions, your Honor.

THE COURT: All right. Any redirect?

MS. WILKINSON: Yes, your Honor.

Could I have the ELMO, please.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Kelly, you were reviewing the photographs with defense counsel, and you were shown the photograph which is marked Frame No. 6 on the back. Do you recall this photograph?

A. Yes, I do.

Q. And you told us there was a piece of plastic there?

A. Yes, there is.

Q. On your log, you just -- or on the log, it was described as what?

A. Wood panels.

Q. Did you recover wood panels from this area?

A. Yes, we did.

Q. Were they large or small?

A. They were various sizes.

Q. Okay. And did you place them in a plastic evidence bag with that plastic piece there in the photograph?

A. Yes, I did.

11271

Ronald Kelly - Redirect

MS. WILKINSON: Your Honor, we'd offer Government's Exhibit 2117 for demonstrative purposes.

MR. TIGAR: No objection, your Honor.

THE COURT: All right. It will be received for demonstrative purposes.

MS. WILKINSON: Thank you.

BY MS. WILKINSON:

Q. Mr. Kelly, you reviewed this Government's Exhibit 2117 before coming to court today; is that right?
A. I'm sorry. I can't see that from here.
Q. Did you review this before coming to court today?
A. Yes, I did.
Q. And does that tell you the CT number?
A. Yes, it does.
Q. What does it say?
A. CT-4/21-02.
Q. Was this the second entry on the log of Mr. Wilson's photograph log? Do you need to see that to refresh your recollection?
A. I -- yes, please. You asked me if it was the second entry?
Q. Yes.
A. No, it is not.
Q. Okay. Is it entered on that photographic log?
A. No, it is not.
Q. Okay. So this wasn't entered on the original log by

11272

Ronald Kelly - Redirect

Mr. Wilson; is that right?

A. No, it was not.

Q. Okay. But the photograph was taken?

A. Yes, it was.

Q. Have you compared Government's Exhibit 2117 to look for that piece of plastic in the photograph?

A. Yes, I have done that.

Q. Is it in there?

A. Yes, it is.

Q. Why don't you pull it out and show it to the jury, and I'm going to put the photograph back up. Let me see if I can zoom in. Can you circle for the jury again that piece of plastic. Is that the item you're showing the jury?

A. Yes, it is.

Q. You can put it back in the bag.

THE COURT: You want to make it clear to the jury I think that that's not being offered as evidence in the case.

MS. WILKINSON: Yes, your Honor. Just to show to -- to correspond to the photograph.

THE COURT: Right.

BY MS. WILKINSON:

Q. Mr. Kelly, it's fair to say that you and Mr. Wilson made some mistakes on the log back on April 21st, 1995?

A. Yes, we did.

Q. But let's get back to the piece of evidence that we're

11273

Ronald Kelly - Redirect

interested in, 06. You see that in front of you --

MR. TIGAR: I object to the sidebar remark about the piece "we're interested in."

MS. WILKINSON: I'll withdraw that, your Honor.

BY MS. WILKINSON:

Q. Let's focus on 06. Can you see the Government exhibit there, 665, in your hand?

A. Yes.

Q. Is that it?

A. Yes, it is.

Q. Does it have 06 marked on it?

A. Yes, it does.

Q. Does it have a Q number marked on it?

A. Yes, it does.

Q. What is the Q number?

A. Q507.

Q. Now, can you look at the exhibit number again? I think I might have said 665 and I meant 664. On the actual item itself, not the bag. On the item. On the item, not the bag.

A. 664.

Q. Okay. I'm sorry. I misspoke.

Is that the item you recovered on April 21, 1995, and marked as 06?

A. Yes, it is.

Q. What is the Q number assigned to it?

11274

Ronald Kelly - Redirect

A. Q507.

Q. When you seized it, what did you do with it?

A. I picked it up, placed it in a plastic bag, sealed the bag. The bag was labeled with the 06, date, and my initials, and then I handed it to Agent Wilson.

Q. Was the bag sealed when you handed it to Agent Wilson?

A. Yes, it was.

Q. And is Government's Exhibit 664, or what we've been referring to as 06, the item itself -- not the bag, the item -- is it in the same or similar condition to when -- as to when you saw it back on April 21, 1995?

A. The item is substantially in the same condition.

MS. WILKINSON: We have no further questions, your Honor.

THE COURT: Mr. Tigar.

MR. TIGAR: Limited, your Honor.

May I retrieve 2117, your Honor?

THE COURT: Yes.

MR. TIGAR: And 664.

RE-CROSS-EXAMINATION

BY MR. TIGAR:

Q. Mr. Kelly, you told us about 2117; correct, sir?

A. We just spoke about that.

Q. Yes.

A. Correct.

11275

Ronald Kelly - Recross

Q. And that is a bunch of wood fragments and one piece of plastic; correct?

A. Yes.

Q. Now, what made you decide to put the wood and plastic fragments in the same bag, sir?

A. We just collected several items and bagged them. No particular reason.

Q. Now, all of the other wood fragments that you collected, the large ones were put in separate bags?

A. Not necessarily, no. There's other items with multiple items in them.

Q. 664 was put -- Government Exhibit 664 was put in its own bag; correct?

A. That's correct. Some items were.

Q. And -- and the other items we looked at on these -- this picture book, they were put in separate bags; correct?

A. Many items were put in separate bags; that's correct.

Q. And we saw pictures of them?

A. Yes, we did.

Q. Now, were you aware that what you -- what was going to happen to things that you collected was that they were going to be tested to see if they contained any residues? Right?

A. Yes.

Q. And do you know that residues, these things left, are present in minute quantities at bombing crime scenes?

11276

Ronald Kelly - Recross

A. Yes.

Q. Are you aware of that?

A. Yes.

Q. And did you know that on the 21st of April?

A. Yes.

Q. Did you get any instructions about separately bagging items recovered from the scene so that there was no cross-contamination?

A. That's a two-part question.

Q. Okay. Do you know what cross-contamination is?

A. Yes, I do.

Q. Did you receive any instructions before your recovery on the 21st of April about minimizing the risk of cross-contamination?

A. No specific instructions.

Q. Okay. What is cross-contamination?

A. Cross-contamination would be when one item would transfer material to another item and that transfer would not be a desirable transfer.

Q. And you had been warned prior -- you had been told prior to the 21st of April that that phenomenon happened; right? Before the 21st of April, you'd been told about cross-contamination, what it was; correct?

A. I was aware of what cross-contamination was that day, yes.

Q. Now, sir, you testified that item -- the item in 664 is in

11277

Ronald Kelly - Recross

the same or similar condition to when you saw it; correct?

A. Those weren't my exact words.

Q. Well, the question you were asked was is it in the same or similar condition and you said yes. Do you remember that?

A. I said the item was substantially in the same condition.

Q. Substantially. And you know that in fact, between the time that you picked it up and today, many, many chemical tests have been performed on it; correct?

BEEN PERFORMED ON IT, CORRECT.

MS. WILKINSON: Objection, your Honor, to his knowledge.

THE COURT: Well, do you have knowledge of that testing?

THE WITNESS: I have some limited knowledge.

BY MR. TIGAR:

Q. And you know that -- that with respect to one of the -- at least one of the chemicals that -- that was thought to be on there once, that it's not there anymore. Do you know that?

A. Yes, I do.

Q. So it is not correct, sir, that this is in the same or similar condition as when you found it, is it?

MS. WILKINSON: Objection.

THE COURT: Well, perhaps it ought to be broken down to differences between appearances and otherwise --

MR. TIGAR: Yes, your Honor.

THE COURT: -- similar condition.

11278

Ronald Kelly - Recross

MR. TIGAR: I was only responding to that one question.

BY MR. TIGAR:

Q. In terms of physical appearance -- right -- it looks the same; is that your testimony?

A. Yes.

Q. You're testifying to that. In terms of whatever chemicals might or might not be on it, you don't know, do you?

A. No, I don't.

MR. TIGAR: Okay. No further questions. Your Honor.

THE COURT: Okay.

MS. WILKINSON: This witness -- we don't need this witness right now. We'll hold him.

THE COURT: All right. You may step down.

Next, please.

MR. MACKEY: We'll call FBI Agent Steve Burmeister.

THE COURT: All right.

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

(Steven Burmeister 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: Steven G. Burmeister,

B-U-R-M-E-I-S-T-E-R.

11279

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Mr. Burmeister.

A. Good morning.

Q. You are here this time to testify just about the chain of custody of a certain item of evidence; is that right?

A. Yes.

Q. Do you see Government's Exhibit 664 in front of you?
A. Yes, I do.
Q. Do you recognize that item?
A. Yes, I do.
Q. Did you receive that item on April 21st, 1995?
A. Yes, I did.
Q. Okay. If we could turn to that date. Were you at the Oklahoma City bombing crime scene on April 21st, 1995?
A. Yes, I was.
Q. And were you working on a chemical Evidence Recovery Team with other people?
A. Yes.
Q. With whom were you working?
A. The other individuals of the team were Mr. Ron Kelly and Special Agent Alton Wilson.
Q. At some time, did you receive evidence from Mr. Wilson?
A. Yes.

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Steven Burmeister - Direct

Q. On what day?
A. The 21st of April of 1995.
Q. Did you receive Government's Exhibit 664?
A. Yes.
Q. In what condition was it when you received it?
A. The condition was in a sealed plastic bag.
Q. Is that the same sealed plastic bag marked 664A?
A. Yes, it is.
Q. How do you recognize that bag?
A. I recognize it based on my initials on the plastic bag.
Q. Do you recognize some of the other writing on there?
A. The other writing, the -- basically, the numeric numbers and Mr. Kelly's initials and the date.
Q. Do you see the date of recovery on there?
A. Yes, I do.
Q. What does it say?
A. It's April 21st, 1995.
Q. Was that bag -- or was that Item 664 sealed in Government's Exhibit 664A when you received it?
A. Yes, it was.
Q. And what did you do with the bag once you received it and the item?
A. Once I received the item, I transported it to the Evidence Control Center in Oklahoma City where I entered it into the Evidence Control Center.

11281

Steven Burmeister - Direct

Q. Okay. Was it sealed when you turned it in?
A. Yes, it was.
Q. Did you receive that item again back in the FBI Laboratory?
A. Yes.
Q. Do you recall what day you received it?
A. Yes, I do.
Q. What day was that?
A. That would be April 28, 1995.

Q. Approximately seven days later?
A. Yes.
Q. And from whom did you receive it at that time?
A. I received it from a Mr. Brett Mills.
Q. In what condition was it when you received it?
A. It was sealed in a plastic bag.
Q. And can you tell the jury today, is Government's Exhibit 664 in the same or substantially the same condition as when you saw it in (sic) April 21st.
A. Yes, it is.
Q. All right. Is it in the same or substantially the same condition as when you saw it on April 28th?
A. Yes.
Q. Now, we're not going to have you testify about this right now, but did you open the bag on April 28?
A. Yes, I did.
Q. Did you perform chemical testing on Government's Exhibit

11282

Steven Burmeister - Direct
664 at that time?

A. Yes.

MS. WILKINSON: We have no further questions, your Honor.

THE COURT: Mr. Tigar.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. Hello again, Mr. Burmeister.

A. Good morning.

Q. My name is Michael Tigar, and I'm one of the lawyers appointed to help out Terry Nichols. I think we met -- I don't know, more than a year ago -- right -- very briefly?

A. I believe so, yes.

Q. Well, I'm only going to ask you about the custody things. You're going to be giving a lot more testimony about the chemical tests you did; right?

A. Yes.

Q. You expect to. And I'll ask you about that then. Just want to know about custody now.

You told -- you were the one directing Agent Kelly -- excuse me -- Mr. Kelly and Agent Wilson as to how to collect evidence; correct?

A. I was instructing them as to the general location for the collection of evidence that day.

Q. And did you give them any instruction about how -- what

11283

Steven Burmeister - Cross
they were to recover?

A. We had a -- discussions as to the types of evidence, as far as the evidence that we would recover would be items that we could retrieve and take back to the laboratory for chemical testing. We wanted to capture that in that point in time.

Q. Okay. And who made the decision to use polyethylene bags as an evidence-collection mechanism?

A. That would have been the evidence bags that we had on hand, and those would have been the ones that Mr. Kelly and I had

and those would have been the ones that Mr. Kelly and I had with us at the time.

Q. And did you instruct Mr. Kelly to wear gloves while he was doing his collecting?

A. That was an understanding, of course, that we would wear gloves throughout the evidence-collection process, yes.

Q. And were these gloves lined with some sort of powder to make them easier to get on and off, or were they unlined?

A. I don't know.

Q. You do know the difference; right?

A. Yes, I do.

Q. You've used both kinds in your work; correct?

A. I have, yes.

Q. Okay. Now, you say that you got -- the item was -- was transported to the Evidence Control Center. Now, help me. Did somebody give you the item in the field, out there at the parking lot?

11284

Steven Burmeister - Cross

A. I received several items of -- one of which is this item here that's before me, Item 664, which I received from Special Agent Wilson.

Q. All right. And where did you receive it?

A. I received it in the parking lot area that particular day.

Q. All right. And did you then take it to the Evidence Control Center?

A. Yes.

Q. All right. You did that yourself?

A. Yes.

Q. And when you took it to the Evidence Control Center yourself, did you sign it in there?

A. Yes.

Q. And sign it in with Mr. Elliott?

A. No.

Q. Who was -- who was the person you signed it in with?

A. It was a June Buckner who was at the Evidence Control Center at that time.

Q. And do you know where it was between the time you signed it in there and the time it arrived in Washington, D.C.?

A. I don't know exactly where it was at the Evidence Control Center.

Q. Okay. Do you know how it was transported to Washington, D.C.? By air, or by surface?

A. Not directly, no.

11285

Steven Burmeister - Cross

Q. Well, given -- as a scientist, you would be interested in knowing how things got to your lab; right? So if there's no objection to it, can you tell us what you understood to be the transportation method.

A. Based on my reviews of the custody logs, it had been transported to the FBI Laboratory with a -- an aircraft.

Q. Okay. And -- did you -- and once you signed it in at the Evidence Control Center, you didn't have anything further to do with it; correct?

A. That's correct, yes.

Q. And just to clarify, when you say it's the -- the same or substantially similar, you did a lot of tests on it; right?

A. I did numerous testing once I received it on the 28th, yes.

Q. And just to be clear, the appearance of it is the same as the appearance of the item you remember, but we're going to find out later that there are some chemical differences -- is that fair to say -- between the item as you got it and the way it is now?

A. Well, I don't know if there's chemical differences. I don't agree with that. There were chemicals that I removed off the surface of this that I did some testing on.

Q. In other words -- but there were changes that took place -- I'm not attempting to suggest anything other than to point out there are some changes that took place in the testing process; right?

11286

Steven Burmeister - Cross

A. After I initially looked at it, it went to other individuals for further testing. I was the first person to receive it for testing.

Q. Yes. Yes, sir. I'm -- but as -- as it sits there today, there are some other processes that happened to it; correct?

A. Yes. After I looked at it.

MR. TIGAR: No further questions. Thank you, sir.

MS. WILKINSON: Your Honor, just to make the record clear.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Burmeister, without telling us your findings as to what items you found on Government's Exhibit 664, are you able to tell us whether the chemicals that you found on there could permeate a plastic bag?

A. They would not permeate a plastic bag. That's correct.

MS. WILKINSON: That's all.

MR. TIGAR: No questions, your Honor.

THE COURT: All right. You may step down now, and we'll hear from you later.

Next, please.

MR. MACKEY: Your Honor, we would recall Mr. Brett Mills.

THE COURT: All right. If you'll please resume the stand under the oath you took with us before.

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THE WITNESS: Yes, sir.

(Brett Mills was recalled to the stand.)

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Mills, this is your last appearance, isn't it?

A. I hope so.

Q. You've told the jury that you're responsible for logging in the evidence; right?

A. Yes, ma'am.

Q. And did you receive Government's Exhibit 664 at sometime during this investigation?

A. Yes, ma'am.

Q. That plastic piece?

A. Yes, ma'am.

Q. Do you recall what day you received it in the laboratory?

A. April 27, 1995.

Q. And do you recall how it was -- was it in that plastic bag, Government's 644A, when you received it?

A. Yes, ma'am.

Q. Okay. Was there another plastic bag on top of it when you received it?

A. Yes.

Q. Or it was in another plastic bag, I should say?

A. Yes, ma'am. 664B.

Q. Okay. So it was double-wrapped by the time you got it?

11288

Brett Mills - Direct

A. Yes, ma'am.

Q. Okay. And did you examine it?

A. Yes, ma'am.

Q. Did you open the interior bag, 664A?

A. I didn't open either bag.

Q. Okay. Did you mark 664A, the interior bag?

A. No, ma'am.

Q. Look at 664A, the bag.

A. Right.

Q. Did you put a Q number on there?

A. No, ma'am.

Q. Did someone put a Q number on there?

A. Yes, ma'am.

Q. What's the Q number?

A. Q507.

Q. Okay. You did not put that Q number on there?

A. No, ma'am.

Q. Okay. What did you do with Government's Exhibit 664 when you received it into the laboratory?

A. When I was checking it in to make my worksheet, 664B, the outer bag, I wrote my lab number and the Q507 on there.

Q. I'm sorry. So you didn't even take it out of the first bag. You put the Q number on the outside?

A. Yes, ma'am.

Q. Okay. So you didn't do any of the writing on the interior

11289

Brett Mills - Direct

bag?

A. No, ma'am.

Q. Did someone do that at a later time?

A. Yes, ma'am.

Q. Okay. You marked the -- the exterior, which is 664B --

A. Yes, ma'am.

Q. -- with Q507?

A. Yes, ma'am.

Q. And you put the laboratory number on it?

A. Yes, ma'am.
Q. What did you do with it after that?
A. I put it back into the box, finished checking in my case.
Q. And did you deliver Government's Exhibit 664 and the two plastic bags to an examiner for testing?
A. Yes, ma'am.
Q. To whom did you deliver it?
A. Agent Burmeister.
Q. And was it sealed at that point when you delivered it to him?
A. Yes, ma'am.
Q. Had you delivered it to anyone else for testing before you gave it to Agent Burmeister?
A. No, ma'am.
Q. Did you personally take it to Agent Burmeister?
A. Yes, ma'am.

11290

MS. WILKINSON: We have no further questions.

THE COURT: Mr. Tigar.

CROSS-EXAMINATION

BY MR. TIGAR:

Q. We have to stop meeting like this.
Mr. Mills, when you checked the evidence into the laboratory, you -- you wrote that number on it using the same procedure you've described before; correct?
A. Yes, sir.
Q. Using the DW initials?
A. Yes, sir.
Q. And that was because Mr. -- Agent Williams was the principal examiner; correct?
A. Yes, sir.
Q. And so if we looked at that, we'd see a number and the initials DW; correct?
A. Yes, sir.
Q. And you say -- you assigned the Q number; correct? Q507?
A. Yes, sir.
Q. That was your next Q number in order; correct?
A. That's correct.
Q. That's your standard procedure; is that right?
A. Yes.
Q. Now, it arrived -- this arrived in your laboratory in a box; correct?

11291

Brett Mills - Cross

A. Yes, sir.
Q. A box that had been air-freighted?
A. No, sir.
Q. Where had the box been?
A. The box was hand-carried back by another agent.
Q. I see. And carried on an airplane or surface transportation, do you know?
A. It was an airplane.
Q. Okay. And it was just a regular, old cardboard box; right?
A. Yes, sir.

... 100, 511.

Q. And hand-carried back from Oklahoma City to Washington, D.C.; correct?

A. Yes, sir.

Q. And then directly to your offices in the J. Edgar Hoover Building on Pennsylvania Avenue?

A. Yes, sir.

Q. That's where your laboratory is; right?

A. Yes, sir.

Q. And from the time that you got it to the time that you took it to Agent Burmeister, how much time elapsed?

A. I took it to Agent Burmeister on the 28th, and I received it on the 27th.

Q. Where was it overnight?

A. It was in my office.

Q. And that's an office in that space there in the J. Edgar

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Brett Mills - Cross

Hoover Building; correct?

A. That's correct.

MR. TIGAR: Nothing further, your Honor.

THE COURT: Anything else?

MS. WILKINSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MS. WILKINSON:

Q. To clear up one thing, Mr. Mills. You've been telling all along that you put "Dave Williams" on there; is that right?

A. Yes, ma'am.

Q. When you put down DW there, are you indicating that he himself reviewed it?

A. No, ma'am.

Q. Okay. Have you reviewed other evidence in this case that Mr. Williams has reviewed?

A. Yes, ma'am.

Q. And has he initialed that evidence?

A. Yes, ma'am. He puts DRW.

MS. WILKINSON: No further questions.

MR. TIGAR: No other questions, your Honor.

THE COURT: All right.

MS. WILKINSON: Oh, I do, your Honor. I -- we've completed the chain. We'd move in Government's Exhibit 664.

MR. TIGAR: No objection, your Honor.

THE COURT: All right. 664 is received.

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MS. WILKINSON: Thank you. He can now -- if defense will agree --

MR. TIGAR: No objection subject to the matter we discussed at the bench, your Honor.

THE COURT: All right.

MS. WILKINSON: Your Honor, Mr. Mackey says to be -- just to be sure, we'd like to admit the bag 664A and 664B so there's no question on the chain of custody.

MR. TIGAR: May I just look, your Honor?

THE COURT: Yes, you may.

MR. TIGAR: Thank you. May I just ask briefly, your Honor, so that I understand?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. The item is 664; correct?

A. Yes, sir.

Q. Okay. The bag -- then we've got a bag here that's 664A; correct?

A. Correct.

Q. And when you first got this, was 664A inside of 664B?

A. Yes, sir.

Q. And when you logged it in, you did the writing that's on the outside of 664B; correct?

A. Yes, sir.

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MR. TIGAR: All right. Subject to the discussion at the bench, your Honor, no objection.

THE COURT: All right. We'll receive 664A, 664B, 664 -- 664. All right.

MS. WILKINSON: And I think we can finally dismiss Mr. Mills.

MR. TIGAR: Yes, your Honor. No -- no problem with that.

THE COURT: All right.

THE WITNESS: I can leave?

THE COURT: You're not dismissed. You're excused.

THE WITNESS: I'm excused. All right. Take care.

THE COURT: All right. Are you prepared to go forward with Mr. Burmeister?

MR. MACKEY: We are, your Honor.

THE COURT: Let me just ask: Members of the jury, we're going to go into an area that is going to be technical in nature and require careful attention, technical in the sense of scientific or laboratory type; and I know it's the day after a holiday, and I -- I'm not suggesting anything by that, but just wondering whether you're prepared to go forward, all of you, to listen to some technical testimony.

All right. We'll do so. Bring in Agent Burmeister again.

If you want to take a recess any time during this,

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just let me know and we'll do it. I mean any of you. You don't have to do a majority vote on it.

If you would please resume the stand under the oath you just took with us.

(Steven Burmeister was recalled to the stand.)

Ms. Wilkinson.

MS. WILKINSON: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. WILKINSON:

Q. Mr. Burmeister, let's start at the beginning. Tell us what your title is at the FBI.

A. My current title with the FBI is supervisory special agent, but I'm serving as the acting unit chief for the Chemistry Unit.

Q. What does the Chemistry Unit do in the FBI Laboratory?

A. The Chemistry Unit has numerous functions. Our principal duty is to conduct chemical analysis of evidence that's submitted to the laboratory. It's a wide variety of materials, from toxicology samples to drugs to explosive samples.

Q. Have you in your career focused on one particular area?

A. Yes.

Q. In what area have you focused?

A. The areas in the -- the field of the explosives analysis and explosive-residue analysis.

Q. Okay. Now, we'll get into this a little bit later, but

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Steven Burmeister - Direct

you're describing two different types of analyses; am I right?

A. Yes.

Q. Can you tell us what they are and distinguish them for the jury, please.

A. There would be an area of explosives analysis, and this is the examination of bulk, solid samples of explosives as well as the area of explosives residue analysis; and that is once an explosive goes off, it produces by-products and materials. The explosive-residue analysis is the examination of those particular materials themselves.

Q. When you examine an item in your laboratory for residue, is it visible to the human eye?

A. A residue is typically invisible to the -- to the naked eye.

Q. And would it be visible under a microscope?

A. Usually, it's not.

Q. And is that different from what you have described to us as explosives analysis?

A. Yes. Explosives analysis would be the physical material that I would look at a surface and be able to physically pick off of a surface an item and take it over for testing.

Q. Could it be a very large item?

A. Yes, it could.

Q. Could it be a small item that you see under a microscope?

A. Yes.

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Q. Did you find items like that on Government's Exhibit 664?

A. Yes.

Q. So when you describe for us your analysis of that item, are you going to be describing explosives analysis or explosive-residue analysis?

A. I will be describing explosives analysis, but explosive-residue analysis is certainly parts that I would have taken with that particular specimen.

Q. Okay. Now, how long have you been working for the FBI?

A. I started working in March of 1987.

A. I started working in March of 1987.

Q. And when you came on, were you -- were you trained as a special agent?

A. Yes.

Q. And after that, did you serve somewhere in the field?

A. Yes. I was assigned to the field.

Q. At some point, were you assigned to the FBI Laboratory?

A. Yes.

Q. At what point was that?

A. In January of 1992, I was assigned to the FBI Laboratory.

Q. Could you tell the jury a little bit about your educational background, please. Where did you go to college?

A. I hold a bachelor of science degree in chemistry from Susquehanna University as well as a master's of science degree in chemistry and forensic chemistry from the University of Pittsburgh.

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Q. And have you ever taken any other advanced organic chemistry courses?

A. Yes, I have.

Q. When did you do that?

A. That was after graduating from Susquehanna University, I took several advanced organic chemistries -- chemistry courses at Villanova University.

Q. After you finished your education and your master's, did you go right into the FBI?

A. No, I did not.

Q. Did you work in the private sector?

A. Well, yes, I did.

Q. Okay. Tell us, in describing that for the jury, how long you've been working in the field of explosives and explosives residue.

A. Probably since the early 1980's. That was when I started working in the area of explosives analysis.

Q. When was the first time that you held a job where you worked in that area?

A. That would have been with the Allegheny County crime laboratory for a short period of time in Pittsburgh, Pennsylvania, and that would have been in the -- just shortly after 1984.

Q. What did you do after that?

A. I then went to work for a company called Pharmacon,

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Incorporated, in Pittsburgh, Pennsylvania. In this particular company, I served as the laboratory manager as well as the supervisor of their forensic division.

Q. What type of laboratory is Pharmacon?

A. Pharmacon is a private forensic laboratory.

Q. And what type of work did you do there specifically?

A. My specific duties, of course, like I said, is the -- as the laboratory manager, I basically reviewed all of the work that was coming in for toxicology as well as forensic cases that were going out, as well as the supervisor of their

forensic division. So forensic samples that came in, these were samples of accelerant cases, drug analysis, as well as explosives analysis that were handled by the laboratory.

Q. When you worked for that private laboratory, were you ever asked to testify regarding examinations?

A. Yes.

Q. Did you testify on -- on behalf of both the prosecution and the defense?

A. Yes, I did.

Q. And would that alter your results in any way?

A. No.

Q. Now, you worked for Pharmacon for how long?

A. I worked for Pharmacon up until 1987 when I entered into the FBI Laboratory -- or, I'm sorry. Into the FBI.

Q. If we could --

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A. Excuse me.

Q. If we could, let's go back to your master's field of study. Could you tell the jury a little bit about your area of concentration when you worked on your master's degree.

A. The area that I concentrated with the master's degree was in the area of microcrystal analysis; that is, taking the crystalline nature of explosives and explosive residues and analyzing their crystalline formation.

Q. During that time, did you analyze the crystalline structure of ammonium nitrate?

A. Yes.

Q. And are you familiar with the crystalline structure of ammonium nitrate from your work at that time?

A. Yes.

Q. Can you tell us in laymen's terms what it means to do that kind of microcrystal analysis.

A. Well, it's a broad-ranged area. There's numerous ways of looking at the crystalline formation of particular samples, explosive samples. One, you can add a chemical to form new chemicals, new crystalline shapes; and those crystals can be examined using microscopes and other techniques, or you can actually recrystallize the actual explosive itself and analyze its crystalline formation, its structure, its shape and size and how light penetrates it. And so all of these would be examined using microscopic techniques.

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Q. Now, during your time working on your master's and your subsequent experience in the FBI Laboratory and in private laboratories, have you determined or are you aware that there are certain unique structures for each crystalline explosive material?

A. There are unique formation, unique physical shapes of various crystals, yes.

Q. And does that help you identify certain explosives?

A. It's one thing that you will look at in the identification phase.

Q. Does ammonium nitrate have a unique crystalline formation or structure?

A. It has a unique shape and size, yes.

Q. And if you looked at a crystal, could you, through various forms of testing, identify it as an ammonium nitrate crystal?

A. You could determine that it is consistent with ammonium nitrate. You -- as an experienced examiner of that particular crystal, some may say that they could identify it. For myself, I would just say that it's consistent with. I would require further testing.

Q. And if you conducted that further testing, could you actually identify the substance as a crystal of ammonium nitrate?

A. Yes.

Q. And are you familiar with the crystalline structure and the

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Steven Burmeister - Direct

ions and other portions of that ammonium nitrate crystal that you could use to identify it?

A. Yes, I am.

Q. Now, in addition to being -- to being interested and educated in explosives and explosives residue, do you have any experience in arson investigations?

A. Yes, I do.

Q. Have you ever been a firefighter?

A. Yes.

Q. Can you tell the jury a little bit about your expertise in arson investigations.

A. I have approximately 12 years' experience as a volunteer firefighter, during which that period of time, I was also working with the Pennsylvania state police fire marshal's office and received training from the Pennsylvania state fire school in the area of arson and accelerant examination; and I've also subsequently taken varied courses on accelerant identification and examination in this area.

Q. Do you belong to any associations -- associations that are connected to those areas of expertise?

A. Yes, I do.

Q. What association do you belong to, or what associations?

A. Would you like all the associations or just in the area of --

Q. Why don't you give us the ones in the area of arson first.

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A. Okay. The one primary organization is the International Association of Arson Investigators.

Q. And through that and through your subsequent research, are you familiar with the types of fires suppressants used by arson -- used by firefighters?

A. Yes, I am.

Q. And is the -- to your knowledge, is ammonium nitrate used in -- as a fire suppressant by firefighters?

A. No.

Q. Now, let's turn to your time at the FBI. When you joined the FBI and were assigned to the laboratory, were you qualified

the FBI and were assigned to the laboratory, were you qualified at that point to be an examiner?

A. No.

Q. What did you have to do?

A. Initially, when I first came on board into the FBI Laboratory, I was assigned to work a particular area, and I was assigned a particular individual as my training supervisor, if you will, and began the studies for the area of explosive residue and explosives analysis.

Q. During that time, did you take any courses in the use of certain instruments?

A. Yes. That was part of my training.

Q. What type of courses did you take?

A. I took courses in various techniques of chromatography, x-ray powder defraction, other instrumental techniques that

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would be used during the course of my employment.

Q. All right. And during that time, at some point, did you become qualified to be an examiner on explosives and explosives residue for the FBI Laboratory?

A. Yes.

Q. At what time did you become familiar -- did you become qualified?

A. It's January of 1993.

Q. And after that, did you work on numerous explosives examinations?

A. Yes.

Q. Now, have you ever attended any conferences or symposia in your field of explosives and explosives residue?

A. Yes, I have.

Q. And have you talked to other experts in the field?

A. Yes, I have.

Q. And have you ever discussed with them the properties of ammonium nitrate?

A. Yes, I have.

Q. Have you participated in the investigation of other bombing crime scenes?

A. Yes.

Q. Now, let's turn to April 19, 1995. Were you in your laboratory on that day?

A. Yes, I was.

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Q. And do you recall learning about the bombing in Oklahoma City?

A. Yes.

Q. Were you asked to go to the crime scene?

A. Yes.

Q. What was your purpose in going to the crime scene that day?

A. The purpose to go to the crime scene was to examine the entire scene and to collect physical evidence that could be brought back to the FBI Laboratory for testing to determine what possible explosive was used.

Q. Now, when you did that, were you in charge of that

collection of the explosive residue and explosives evidence?

A. Yes, I was.

Q. And did anyone direct you as to what to do when you got to the crime scene?

A. No.

Q. Were you in charge of that team?

A. Yes, I was.

Q. On what day did you arrive?

A. I arrived on April 20th, 1995.

Q. And why did you arrive on April 20th?

A. Because of inclement weather that was in the Oklahoma City area, we, as a group, had to sit (sic) down our plane in Little Rock, Arkansas, and wait the storm out.

Q. And do you recall -- were you in a hotel on the night of

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the 19th?

A. Yes, I was.

Q. Did you see pictures of the bombing crime scene?

A. Yes, I remember watching it on the television.

Q. And do you recall what you thought when you heard about the rain and you saw the pictures of the bombing crime scene?

A. Yes. I remember looking at the pictures, seeing the rain coming down and thinking that much of it was being washed away.

Q. All right. Well, let's tell the jury a little bit about that. Why is it -- why were you concerned, looking at the

crime scene and seeing the rain, that some of the evidence might be washed away?

A. Well, as part of the overall examination, various explosives and explosive residues are, in fact, water soluble; and so anytime you come in contact with the water, direct water, it could potentially be washed off of a particular item.

Q. Is that true for different types of explosives?

A. Well, some explosives will be absorbed into a surface and held in and captured there, even though you have water washing over the surface. And so in certain cases like that, you will retain it and it will still be captured. But some surfaces -- for example, a piece of glass, or a piece of metal -- it could readily be washed off of that particular item.

Q. Now, to start with, let's talk about the different kinds of explosives you could look for at a crime scene. Are there

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different categories of explosives that you refer to in your field?

A. Yes.

Q. Is there such a thing as high explosives?

A. Yes, there are.

Q. Can you tell the jury generally what a high explosive is.

A. Generally, a high explosive is in a material that will detonate. Once it goes off, it has very high speeds. It will cause things to go into small fragments and do extensive damage. But classically, they are in the area of what we call in chemistry organic chemistry, and they are usually

carbon-based materials. These particular explosives usually have a high velocity of detonation, which is a -- a term for how fast the material will function.

Q. Can you give us some examples of what high explosives are.

A. Certain examples of these materials would be things like TNT, nitroglycerine, certain dynamites would fall within this particular category.

Q. Is there another category of explosives?

A. Yes.

Q. What is that?

A. There's another category called low explosives.

Q. And what are they?

A. Typically, low explosives are materials that will burn rapidly. And the classic one would be things like black powder

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or the pyrotechnics that we see at 4th of July, which are usually flash powder. These are things called low explosives.

Q. And what is the difference again between how low explosives and high explosives are either detonated or burned? Can you explain that again, please.

A. Yes. The high explosives are materials that will detonate. That is, there's some sort of shock wave that allows it to function. A low explosive does not function with a shock wave. It's a rapid burning, so it's burning through as it's functioning. So there is a major difference in the speed at which it will actually work.

Q. You haven't mentioned ammonium nitrate. Is that an explosive?

A. It is in its own right, yes.

Q. Okay. Tell us how ammonium nitrate is an explosive.

A. Ammonium nitrate is considered classically as an oxidizer. And in chemistry, a material that's considered an oxidizer is something that will promote the release of oxygen. It's readily available for reaction. And in chemistry, when we have reaction taking place, one of the primary things that we need is oxygen. The other things that we need are fuels and some sort of heat to get the reaction to go. But having the oxygen present is very crucial. Ammonium nitrate has the oxygen there. It also has built into it the fuel aspect. But in -- ammonium nitrate as it stands alone is not efficient in the use

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of that oxygen. So what it requires is some sort of additional fuel in order to act a little better.

Q. We've heard a little bit about that from another expert, but can you combine fuel oil with ammonium nitrate?

A. Yes.

Q. And does that make it an explosive?

A. Yes, it does.

Q. Okay. Can you combine nitromethane with ammonium nitrate?

A. Yes.

Q. Does that make it an explosive?

A. Yes.

Q. Now, is ammonium nitrate by itself an inorganic, or organic explosive?

A. Ammonium nitrate is classified as an inorganic material.

Q. And is ammonium nitrate water soluble?

A. Yes.

Q. So when you saw the rain at the crime scene on April 19th, were you worried about different types of explosives being washed away?

A. Yes.

Q. Are there other explosives other than ammonium nitrate that could be washed away?

A. Yes.

Q. Can you give us other items that are -- other explosive items that are water soluble.

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A. Well, actually, all explosives, to some degree or another, are water soluble, even the ones that we were talking about, the TNT and the nitroglycerine. Those themselves have a degree of water solubility. The important aspect is what type of material or surface that it's actually adhering to.

Q. All right. Based on your knowledge of explosives and how they detonate, are there other reasons why you may not find explosives residue or explosives at a crime scene other than wet?

A. Yes. There are things that can cause it to disappear, if you will, if that's what you're asking.

Q. Okay. Well, let's start with first how an explosion works. Can you tell the jury generally how an explosion works.

A. Well, if we go back to the principal items that we need in order for an explosion to take place, we need to have the fuel present, we also need to have an oxygen source present, and we also have to have something that will bring those two together. And typically, that's a heat source or some sort of shock. So those are principally the two ways that you would initiate the reaction to take place.

Q. And how does the reaction take place once you have those items?

A. Well, an explosive is a material that's an energetic material, that is something that's packed full of a lot of energy. And it's very tightly held, and it's anxious to

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release that energy. And so if you can provide some sort of stimulus to release that energy, that's what an explosive is doing. It's releasing masses -- massive amounts of energy that are packed very tightly together in the material.

Q. Now, can you give us an example of how that would work if you had these tightly -- this tight material and the shock force. What would happen during that reaction?

A. What I usually like to describe is a series of rubber bands that are wound together and really tightly held; and that, itself, if we held it, would be classified as an explosive.

Now, if we provided some sort of stimulus to release those rubber bands, they would unravel and spread all over the place

Rubber bands, they would unravel and spread all over the place. Well, as it's spreading all over the place, the residue that is formed are the parts of the rubber bands that were once formed in that original material. The other thing is as it's unwinding, it's pushing out various parts of unraveled particles of the rubber band. So not only am I detecting them later, the unraveled parts of the rubber band, which is the original explosive, but also the residues that are formed once it unravels.

Q. Now, let's use as an example, if we could, ammonium nitrate with some sort of fuel oil and some kind of fusing mechanism to provide the shock to the explosion. Would that work?

A. Yes.

Q. Okay. What would happen if the device were properly

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constructed if you have a proper mixture of ammonium nitrate and fuel oil and this shock source? What would happen to the device?

A. The entire --

Q. Chemically.

A. Chemically, you have the material that will actually form a chemical reaction, and the material will explode and detonate.

Q. Would you expect, if it was -- if it was designed properly and put together properly, that a lot of the explosive, the ammonium nitrate and the fuel oil, would remain?

A. It's dependent on the actual configuration of that device as to how effectively it will initiate or explode.

Q. Tell the jury why that is.

A. Well, there's various aspects. If you're -- if in the case of ammonium nitrate and fuel oil, there may be some parts of the entire mixture that do not receive the fuel oil, then it will not explode fully and to completion. If the material is in an irregular shape -- and there's various parts that may not actually explode because it's blowing out. But if you imagine in your mind the explosion taking place, that unraveling of the rubber bands, it's moving out in an outward direction; and as it pushes out, there's various material that is being pushed out with it. So there's various parts of that that will not explode and will not be consumed in the overall chemical reaction.

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Q. What if that ammonium-nitrate/fuel-oil bomb were contained in a truck? Would you expect the entire truck to be consumed by the bomb? Or would you expect some of it to remain?

A. I would expect some of it to remain because it's moving out from that particular center area of the explosion.

Q. Okay. Let's go back to a term we've heard before called an improvised explosive device. Can you tell the jury what you understand that to be.

A. This would be something that will be constructed from materials that one can readily obtain. These are either commercial products or materials that they would put together themselves. In the area of the explosive, you could

commercially obtain an explosive or you could actually manufacture it yourself. And putting all of the pieces together to form an explosive device would actually be an improvised explosive device, something you participate in making.

Q. If someone put together an improvised explosive device and it detonated and you were there post-blast, could you predict what residues would survive and which ones would not?

A. No. You wouldn't be able to predict that.

Q. Why is that?

A. There is a random nature that as the explosion occurs, you could do it several times and finding explosive on a particular piece, for several different chances at doing the explosion,

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you may not find explosive on that particular piece. You may find it in one of the particular series. It all depends. It's a very random way at which the explosion occurs.

Q. Now, what if you knew that the device, the improvised explosive device was ammonium nitrate/fuel oil and it was placed inside a truck? Could you predict, based on your knowledge of the chemical capabilities of that type of device, what portions of the truck would survive and which portions would not?

A. I wouldn't be able to predict that.

Q. Okay. Would you be able to predict what portions -- if there were containers, what portions would survive and which portions would not?

A. I wouldn't be able to predict that.

Q. Would the size of the device affect that? Your -- what portions would survive and what portions would not?

A. I don't think I'd be able to answer that, either.

Q. Okay. Are there a variety of factors that one would have to know to be able to predict what residues would survive and which ones would not?

A. Certainly, there's variables that would come into play as to whether or not it would survive or not. How those variables will impact on a particular explosion, you would have to do several test studies to test your particular model that you're setting up for that experiment.

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Q. And would you have to know the size of the device to do that?

A. Size is a variable, yes.

Q. Would you have to know the composition of all of the explosives?

A. You would have to know that, yes.

Q. Would you have to know how the device was actually constructed?

A. Yes.

Q. Would you have to know where it was constructed inside the truck?

A. That would be another important factor.

Q. Would you have to know the weather that day?

A. Yes.

Q. Why is that?

A. Well --

Q. I mean at the time of the explosion, not after it.

A. These are all test parameters that you would have to know, the weather being the temperature, the humidity, the pressure that's in the air. All of these factors have to be reported in order to reproduce that particular type of event.

Q. And that would -- would that be the only way, if you could reproduce exactly what happened at the time, that you would be able to predict what would survive and what would not?

A. And even then, you'd probably have to do several series of

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tests and numerous testing over and over to reproduce that.

Q. And why is it that it's virtually impossible for you to predict for us what would survive and what wouldn't?

A. It's again the random nature; that it occurs in various angles. And if you're putting this particular experiment together, it could react in one particular direction and change. And so the survivability on a particular item would -- would change and vary based on all of the parameters that we've -- we've talked about.

Q. Knowing that it's impossible for you to predict once you come to a blast scene after the explosion has been completed, how do you decide how to look for certain residues when you come to a crime scene?

A. It's based on seeing previous samples and knowing what types of materials explosives will survive on. And it's not that I go to a crime scene and say that I will look only for these particular materials. But there is a list of materials that I have had -- I have in my mind that I will try to seek out because in the past, they have been good surfaces for the capturing of explosives and explosive residues.

Q. What type of surfaces do you think are more likely to contain those residues or explosives and that you look for when you go to a crime scene?

A. There's glass, for example, pieces of metal, wood fragments. Pieces of plastic and foam have always been good

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surfaces to capture and hold explosives.

Q. Why are they good surfaces?

A. Well, the -- they provide a -- an open area to retrieve it. Plastic, for example, it will absorb high explosives. Foam rubber, for example, expands and almost serves as a baseball glove, almost, and captures material as it penetrates through it. Metal, of course, is just another flat surface where material is deposited onto.

Q. When you went to Oklahoma City on April 20th, did you determine whether you could collect everything that was on the crime scene to look for the residue?

A. It would have been impossible, I think.

Q. Why is that?

Q. why is that?

A. There were thousands and thousands of pieces of evidence. It was a very complex crime scene principally because of the -- the active ongoing processing, looking for survivors, moving of equipment around. There were a lot of variables that were taking place that had to be overcome.

Q. I take it you can't make it into a laboratory setting; is that right?

A. That's right.

Q. So what did you do when you got there on April 20th?

A. On April 20th, principally, examined the scene and developed a strategy as to attack various areas that I would see as being viable spots for explosive-residue analysis and

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basically doing an assessment and developing a strategy at that point.

Q. Do you recall walking to the crime scene on April 20th?

A. Yes.

Q. At that time, were you looking for residue or were you developing your strategy you just told us about?

A. Both. Initially, it was developing the strategy.

Q. Tell us what you saw when you got to the crime scene, Mr. Burmeister.

A. Oh, I -- I remember vividly walking up 6th Street where there was numerous pieces of debris that were in the roadway, pieces of glass, fragments of metal. I just remember that it seemed to be a town frozen in time because there was no activity in the streets. Moving to the North Robinson Street, when I rounded the corner, I remember seeing the -- the Murrah Building sort of silhouetted in the blue sky and the -- the immense damage that was done to that particular building. At that point, I in my mind tried to develop a strategy for the examination of that entire scene.

Q. Had you ever been to a bombing crime scene that large?

A. Not of that magnitude where the exterior of a building had that much damage.

Q. Had you ever been to a bombing crime scene that accompanied that large of an area, streets and -- and other buildings?

A. Not that wide of an -- of an area; right.

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Q. So what strategy did you determine to use to try and collect explosives and explosives-residue evidence?

A. I wanted to go to various areas that would be protected from the elements, in buildings, and particular objects that would have been sheltered from the -- from the elements.

Q. What areas of the Murrah Building and the surrounding area did you choose?

A. This would have been -- initially, I remember certain beams, concrete beams that were out in front of the building and swabbing the underside of those beams which would have been protected from the direct elements. Pieces of metal fragments that were on the exterior, we were doing the underside. Those areas that were protected from direct rain activity.

Q. Now, at that time, did you have any idea which items might have residue on them or explosives and which items would not?

A. No. I -- the basis behind it was going towards those items which in my mind had been good in the past, and that's what I was moving forward to.

Q. Did you have a microscope with you on April 20th to look at those items?

A. No.

Q. Would you conduct an examination of evidence at the crime scene?

A. There would have been a -- if I will, a visual examination of the particular material, but principally, to capture it and

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take it back for retrieval to the laboratory for examination.

Q. Why is it that you wouldn't perform your tests for chemical residues or explosives at the crime scene?

A. I wouldn't have had the proper instrumentation, the proper area to work with the particular sam -- samples out in the field. It's best to take it to the laboratory where I have better equipment to work with.

Q. And on April 20th, did you seize any evidence that day?

A. Yes.

Q. What evidence did you seize?

A. There was a street sign that was out in front of the Murrah Building, there was a piece of tire fragment, as well as some swabbings that were taken.

Q. Do you recall where exactly the parking sign was before you took it?

A. Yes.

Q. Where was it?

A. It was in front of the Murrah Building, across the street. And there was a sign that was bent over -- the actual signpost was bent over, but a "no parking" sign was affixed to the signpost.

Q. I want to show you what's been marked but not yet in evidence Government's Exhibit 827. Do you recognize that photograph?

A. Yes, I do.

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Q. How do you recognize it?

A. I recognize the -- the pole and the street sign and the parking lot area on 827.

MS. WILKINSON: Your Honor, we'd offer Government's Exhibit 827.

MR. TIGAR: Briefly, your Honor.

THE COURT: Yes. You may.

MR. TIGAR: I wonder if I -- may I put this -- this is 940 in evidence.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Mr. -- Agent Burmeister, would you just indicate for us, please, where along this N.W. 5th Street that street sign was

approximately, just so I can see what we're looking at on that picture you just saw.

A. Okay.

Q. So when you -- so that -- that -- that parking sign controls the parking along 5th Street and is implanted in the sidewalk that's between the street and the parking lot, itself? Is that fair to say?

A. It's fair to say that it was a street sign on that sidewalk. Whether it regulated the parking, I don't know -- I'm not a parking attendant.

Q. All right. And the cars that we'll see in the back when it's in evidence, those were cars that were actually in that

11322

Steven Burmeister - Voir Dire
parking lot; right?

A. Yes.

MR. TIGAR: No objection, your Honor.

THE COURT: All right. 827 received.

MS. WILKINSON: If we could display it, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Mr. Burmeister, tell the jury what they are looking at.

A. This particular picture, in the center of the picture is a signpost, and at the top of the signpost is a sign that is bent. It has a curvature to it; and if you lined it up, the -- the pointed end of that particular sign would point towards the Murrah Building and the center crater area of the Murrah Building.

Q. Did you find this parking sign of interest when you saw it?

A. Absolutely.

Q. Were you so interested in it that you seized it?

A. Yes.

Q. Why did you do that?

A. Yes. Because the parking sign itself would serve as -- as a baseball mitt, if you will, to capture anything that is coming from that particular blast scene. And so it would have served as an excellent recovery site, so the entire sign was retrieved.

11323

Steven Burmeister - Direct

Q. Would you recognize that sign if I showed it to you?

A. Yes.

Q. Take a look at Government's Exhibit 826. Do you recognize it?

A. Yes, I do.

Q. How do you recognize it?

A. I recognize it based on my initials as well as laboratory numbers and designations.

MS. WILKINSON: Your Honor, we'd offer 826.

MR. TIGAR: May I just, your Honor --

THE COURT: Sure. You want to approach and take a close look at it?

MR. TIGAR: I'd like to take a look at it.

THE COURT: All right.

THE COURT: All right.

MR. TIGAR: May I just inquire, your Honor, from here?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. This is another one of these items of evidence that was logged in by Brett Mills at the lab and then forwarded on to you? Is that right?

A. I received it from Mr. Mills at the laboratory.

Q. Okay. And do you see a Q number on here? Is it there anymore?

A. Yes. It's right here.

11324

Steven Burmeister - Voir Dire

Q. Q501. So this went to the same package as 507 or at the same time, do you know?

A. I received numerous pieces of -- from Mr. Mills. And 501 was delivered to me at the same time.

Q. As 507?

A. Yes.

MR. TIGAR: No objection. Shall I leave it up there?

MS. WILKINSON: Yes, please, if you could, thanks.

THE COURT: 826, received.

DIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Mr. Burmeister, just to be -- to make it clear, because we're using a lot of different numbers. Mr. Tigar was asking you about another piece of evidence, Q507?

A. Yes.

Q. Is that the portion of the wood panel of the truck that we've also called 664 and 06 on the log?

A. Yes.

Q. Okay. So those two items came to you together; is that right?

A. They were separate, but they came to me at the same time.

Q. Sorry. They were in separate bags?

A. Yes.

Q. Sealed?

A. Yes.

11325

Steven Burmeister - Direct

Q. Okay. Now, can you take the parking sign out and tell the jury what you noticed about it -- take it out of the plastic bag -- when you were at the scene.

A. Well, as you can see in the particular picture, it would have been in a kind of an angled position like this, but the curvature on the sign was significant to me because it had taken a pressure on this side to bend it in that direction. Plus there were -- was visible signs of materials that had penetrated the particular sign itself. And that's principally the surface itself would have been an excellent material to examine for explosive residues, and I retrieved it that way.

Q. Now, you're saying it would have been a good surface. Did you test it for residue?

A. Yes. I did.

... 100, 1 000.

Q. Did you find any?

A. None were identified.

Q. Okay. You can put it down.

Before we leave that item, we heard a little earlier about cross-contamination. Are you familiar with that term?

A. Yes, I am.

Q. What is cross-contamination?

A. Cross-contamination, contamination being anytime some material is introduced into a particular object when that object did not have it to begin with. And cross-contamination would be where, say, something on my hands came on contact with

11326

Steven Burmeister - Direct

this particular exhibit and now is on that particular exhibit. That's been now cross-contamination between the two of them.

Q. Okay. Now, are there different ways for you to determine whether there's been cross-contamination on a series of items that are brought to you together?

A. Well, one thing that I would do is typically examine the exterior portions of the packing material to determine whether there's explosives on those materials, itself.

Q. All right. I'm going to hold up for you Government's Exhibit 664. This is the other item we've been talking about; correct?

A. Yes.

Q. And you received this in the package -- the same series of items as you did the parking sign; is that right?

A. Yes.

Q. And you found no residues or explosives on the parking sign?

MR. TIGAR: Objection. Leading, your Honor.

MS. WILKINSON: I thought I already asked him, your Honor. He said no.

BY MS. WILKINSON:

Q. Did you find any residues on the parking sign?

A. There were some inorganic residues, but none that I would determine as explosive residues.

Q. Okay. And without getting into your findings, did you find

11327

Steven Burmeister - Direct

some explosives or explosive residues on Government's Exhibit 664?

A. Yes.

Q. Okay. And since you found them on 664 and you didn't find them on the parking sign, does that tell you anything about cross-contamination?

A. Yes.

Q. What does it tell you?

A. That it did not occur.

Q. What else did you do on April 20 after you recovered the parking sign, Mr. Burmeister?

A. Afterwards, the materials that we -- that is, myself and Mr. Kelly -- had retrieved, these items were then entered into the FBI's Evidence Control Center in Oklahoma City.

Q. All right. Did you continue to work at the crime scene on April 21st, 1995?

A. Yes.

Q. On that Friday, were you called away at some point?

A. Yes, I was.

Q. And were you directed to go to another location to assist in the investigation of the bombing?

A. Yes.

Q. Where were you told to go?

A. At that point, principally making arrangements for a future flight on the following day to another location for

11328

Steven Burmeister - Direct
examination, as well as additional evidence that was being brought -- being brought into the Evidence Control Center for examination.

Q. Okay. You've already told us in your previous testimony that you received Government's Exhibit 664 from Mr. Wilson; correct?

A. Yes.

Q. And you turned it in to the Evidence Control Center?

A. Yes.

Q. Did you leave the following day?

A. Yes.

Q. Where did you go?

A. Boarded a flight to Junction City, Kansas.

Q. And were you directed to participate in some searches in the Junction City, Kansas, area?

A. Yes.

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

A. Yes, I did.

Q. And did you do some chemical analysis during that search? That's the wrong term, isn't it?

A. That's the wrong term.

Q. Did you do some -- did you try and do some detection for chemical -- potential chemical residues?

A. Yes.

11329

Steven Burmeister - Direct

Q. Did you participate or did you become familiar with the search warrant for Mr. Nichols' house before you did that?

A. Yes.

Q. And do you recall going to Mr. Nichols' house on the afternoon of April 22d, 1995?

A. Yes, I do.

Q. And do you recall the order in which the house was searched?

A. Yes.

Q. Was there a search for booby traps or other explosives?

A. Yes, there was.

Q. Was that the first part of the search?

A. That was initial, prior to the search team making a direct entrance into the house.

Q. You did not participate in that portion of the search; is that right?

A. No.

Q. Who did that portion of the search?

A. These were individuals from the FBI's bomb technician group that were located in that general area.

Q. Now, were you aware that Mr. Nichols had told the agents the night before that he didn't have any booby traps in his house?

A. I was aware of that, yes.

Q. Okay. Did that make any difference to you in terms of

11330

Steven Burmeister - Direct
having that first search conducted?

A. No.

Q. Why is that?

MR. TIGAR: Objection, your Honor.

THE COURT: Sustained.

BY MS. WILKINSON:

Q. Did you have that first portion of the search conducted?

A. Yes.

Q. And did you conduct the second portion of the search?

A. Yes.

Q. And was that prior to any of the seizing agents going in to actually take evidence out of Mr. Nichols' house?

A. That was, yes.

Q. What type of search did you do -- and we'll call it the second phase of the search?

A. Okay. The second phase was principally to move through the residence, looking for direct chemical evidence and, if possible, to -- to take custody of that particular chemical evidence prior to the second or -- if you will, the third phase of that particular search.

Q. Did you wear any special clothing when you did that search?

A. Yes.

Q. What type of clothing did you wear?

A. Full Tyveks gear. That is full-body suits with boot coverings, as well as disposable rubber gloves on the hands.

11331

Steven Burmeister - Direct

Q. What color are those body suits?

A. They are white.

Q. Some of us have referred to them as bunny suits?

A. Bunny suits or Tyveks bunny suits.

Q. And did -- were there others who were assisting you in that second phase of the search?

A. Yes.

Q. Did they all wear the same Tyveks gear?

A. The entire team that moved in was fully clothed.

Q. Did you use any instrument to assist you in your search?

A. Yes.

Q. What type of instrument did you use?

A. It was an ion mobility spectrometer. It's a chemical-analysis instrument.

Q. What does it do?

Q. What does it do:

A. The instrument will screen for a select group of high explosives and principally things like TNT and nitroglycerine. It will do an examination for that and give preliminary findings.

Q. Did you find -- did you get any results during that search?

A. Yes.

Q. What results did you get?

A. There were positive responses for nitroglycerine.

Q. Was that in any way substantial to you at that point?

A. No. I -- I'd seen weapons in the house and having the

11332

Steven Burmeister - Direct

weapons in the house, it's very typical to see the nitroglycerine.

Q. So that didn't indicate to you that there were any explosives in the house at that point; correct?

A. That's correct.

Q. And tell us why nitroglycerine is consistent with having firearms in one's house.

A. Someone who uses an awful lot of firearms, does a lot of shooting will have materials, by-products from the combustion of the bullets on their hands, on their clothing, and it could be moved around in the house, especially if they are storing, say, empty shells of ammunition or something like that.

Q. Did you find any other indications of explosives residue during that second phase of the search?

A. There were some bottles in the basement area during the second phase of that search that were observed.

Q. Okay. Other than that, did you find any residues?

A. No.

Q. And after you completed that second phase of -- of the search, were the search -- was the rest of the search team allowed in for the final phase?

A. Yes.

Q. Did you also participate in the final phase?

A. Yes.

Q. Were you aware that Mr. Nichols had told the agents the

11333

Steven Burmeister - Direct

night before that he didn't have any explosives in his home?

A. Yes.

Q. Did you find explosives in his home?

A. Yes.

Q. Would it -- would it have made any difference to you whether Mr. Nichols had said he had explosives in his home or not in conducting your search?

A. No.

Q. Do you recall what kind of explosives you found in his home?

A. Yes.

Q. What type was it?

A. Ammonium nitrate, and also a combination that could go with the ammonium nitrate. There was a container of nitromethane as well as Primadet which is a -- an initiation mechanism.

Q. Let's just focus on the ammonium nitrate, if we could. Do you recall seeing any ammonium nitrate on the outside of Mr. Nichols' home?

A. Yes.

Q. Where did you see it?

A. The initial observation of the porch area and the steps leading up to the porch area on the outside of the house had little prill-like materials, and prills being small, spherical particles. And those spherical particles resembling ammonium nitrate were removed from that porch area.

11334

Steven Burmeister - Direct

Q. Did you remove them?

A. Yes, I did.

Q. How did you remove them?

A. I was down flat on the surface, removing them with a pair of forceps, individually picking up each one and placing it into a vial.

Q. Showing you Government's Exhibit 247. Do you recognize that?

A. Yes, I do.

Q. How do you recognize it?

A. I recognize it both with my initials, laboratory numbers and designations, plus the collection vehicle itself.

Q. What is the collection vehicle?

A. The collection vehicle being the bottle itself.

MS. WILKINSON: Your Honor, we'd offer Government's Exhibit 247.

THE COURT: Yes. You may examine if you wish.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

Q. Agent --

MR. TIGAR: May I ask from here, your Honor?

THE COURT: Yes. Yes.

BY MR. TIGAR:

Q. The one labeled E1 --

A. Uh-huh.

11335

Steven Burmeister - Voir Dire

Q. -- has two -- two little things in it? Is that right?

A. There's two spherical particles in there, yes.

Q. Now, how many spherical particles were there when you put it in there? Just two?

A. No. There were quite a few that were consumed for the chemical analysis.

Q. Okay. And this metal thing inside of the other jar --

A. Uh-huh.

Q. -- what -- the particles are all adhered to that; right?

A. There are particles adhering to that surface, yes.

Q. And did you put the metal thing in it at the time you collected it?

A. No. This was an elemental test that was conducted after the collection process.

Q. And what's the bag?

A. The bottle -- yes. The bottles were then placed into the paper bag and entered in for evidence storage.

Q. And where -- where have they been since then? I mean, who kept them?

A. These --

Q. Did all -- was all the changes that have been made between the time that you got this and now been under your supervision?

A. I principally did the examination of these -- this specimen under my care, custody, and control. I then released it back over to Mr. Mills and I'm not sure as -- as to where it has

11336

Steven Burmeister - Voir Dire
been, and I haven't conducted further examinations.

Q. Okay. But in terms of being able to tell us what examinations were conducted on this, you would be able to tell us that -- right -- if we were to ask?

A. As far as chemical examinations.

Q. Yes.

MR. TIGAR: Okay. No objection, your Honor.

THE COURT: All right. 247 received.

MS. WILKINSON: Yes, your Honor.

DIRECT EXAMINATION CONTINUED

BY MS. WILKINSON:

Q. Now, I'm going to take out 247, this vial marked E1. Is this your handwriting, Mr. Burmeister?

A. Portions of it.

Q. Do you know? You can look at it. I see your initials. Are those your initials?

A. Yes.

Q. Is that your handwriting?

A. Yes.

Q. Okay. And just tell the jury what it says on there.

A. It says E1, SGB, my initials, and 4-22-95, and a series of numbers, 174-0C-52160, which is an FBI file number.

Q. And did you put these markings on here to indicate the date when you collected this sample?

A. Yes.

11337

Steven Burmeister - Direct

Q. And what was in E1?

A. There were a series of spherical particles, very similar to these spherical particles that are in there now, but several more were in there.

Q. Did you examine some of the particles?

A. Yes, I did.

Q. Did you conduct chemical analysis of those particles?

A. Yes.

Q. What did you determine?

A. The particles were identified as ammonium nitrate.

Q. And I believe you already told Mr. Tigar that most of the -- most of the ammonium nitrate was consumed by your testing?

A. Yes.

Q. Are there just two prills or particles in here now?

A. Yes.

A. Yes.

Q. Now, you also mentioned that you found some nitromethane in Mr. Nichols' house; is that right?

A. Yes.

Q. This was not a large quantity, was it?

A. It was a container. I'm not even sure of the size of the container, but it was not a large quantity of it.

Q. And it was clearly marked that it was for fuel for an airplane; correct?

MR. TIGAR: Yes, your Honor. I -- I object to further

11338

Steven Burmeister - Direct

reference to this unless the container and the label and everything is brought into court.

MS. WILKINSON: We can do that, your Honor. That's no problem.

THE COURT: All right.

MS. WILKINSON: In fact, I'll just leave it at that, and we'll go back to it.

THE COURT: Okay.

BY MS. WILKINSON:

Q. Just to lay the record, Mr. Burmeister, it was marked, was it not --

A. Yes.

Q. -- as to its purpose? And it was marked as some type of fuel for a specific item; correct?

A. Yes.

Q. Not for bomb-making materials?

A. No. It was not.

Q. Okay. Did you also find other explosives in Mr. Nichols' house?

A. Yes.

Q. Did you find Primadet?

A. Yes, I did.

Q. Let me show you Government's Exhibit 141. Do you recognize this?

A. Yes.

11339

Steven Burmeister - Direct

Q. Did you see this Primadet in Mr. Nichols' house?

A. Yes, I did.

Q. Did you conduct some testing on some Primadet in this case?

A. The material that's on the interior surface of the tubing, the orange tubing.

Q. Okay. Well, some of this Primadet was also recovered from Mr. Fortier; correct?

A. Yes.

Q. And did you compare that to this Primadet?

A. No.

Q. Okay. Did you -- have you done a visual inspection?

A. Yes.

Q. Okay. Are they similar visually?

A. Yes, they are.

Q. All right. Now, tell the jury what kind of chemical is inside the orange shock tube of the Primadet.

A. Inside the orange tubing itself is a coating on the interior surface, just bathing the surface itself, of a high explosive called HMX. And it's mixed in with a metal, aluminum powder. So it's a combination of those two materials that's on the interior surface of that tubing.

Q. So when this tubing is detonated, does an explosion occur?

A. There's a very small explosion that takes place inside the tube. It's very rapid. It travels at high speeds through that tubing all the way down to the metal portion on the end which

11340

Steven Burmeister - Direct

is -- if you look at the -- well, if I can draw --

Q. Sure. Go ahead. Draw on the computer screen.

A. Okay. The start of the tube being down on this side, travels through the tubing and would end up down on this area which is the actual detonator, itself, which will explode.

Q. Now, after you completed the search of Mr. Nichols' house, were you asked to do other searches in the Kansas area?

A. Yes.

Q. Were you asked to go to a storage shed?

A. Yes, I was.

Q. Did you, with other members of your team, search the Herington storage shed Unit 2?

A. Yes.

Q. For -- what did you look for?

A. This would have been a search for explosive residues and explosives that may be inside.

Q. Did you conduct a visual examination of the Herington Unit 2 storage shed?

A. A visual examination was definitely part of the search. The initial search.

Q. Did you find any ammonium nitrate prills?

A. No.

Q. Okay. Did you find any explosives residue in that storage shed?

A. No.

11341

Steven Burmeister - Direct

Q. All right. And if ammonium nitrate were stored in a sealed bag, would you expect to find any ammonium nitrate prills in that storage shed?

A. No.

Q. Did you conduct any other searches in the central Kansas area during that time?

A. Only in the Fort Riley area.

Q. Now, did you stay in Kansas on Monday, April 23d?

A. Yes.

Q. Let me go back one second. I'm not sure I elicited from you the date of the search of the Herington unit storage unit No. 2. What date did you conduct that search?

A. That would have been the 23d of April.

Q. Okay. And if the Primadet that we just saw -- if some of the Primadet we just saw had been stored in that storage shed, would you expect -- in the condition it was in, would you

expect to find any explosives residue consistent with HMX, the chemical you told us was in the shock tube?

A. I would not expect to find it, no.

Q. Why is that?

A. It's a commercial product that's packaged up and typically would not be depositing the interior explosive, so it's -- it's in its sealed condition.

Q. Okay. Now, on April 23d, did you stay in Kansas?

A. Yes.

11342

Steven Burmeister - Direct

Q. On April 24th, were you still in Kansas?

A. Yes, I was.

Q. And at some point, were you called away from the Kansas area?

A. Yes.

Q. Were you directed to travel back to Washington, D.C.?

A. Yes, I was.

Q. Why was that?

A. My direction was that a trial was ensuing in the New York area --

MR. TIGAR: Objection, your Honor. Relevance.

THE COURT: Sustained.

BY MS. WILKINSON:

Q. Mr. Burmeister, were you stopped from -- from conducting additional tests in Kansas and in Oklahoma City because of other duties?

A. Yes.

Q. Okay. And did you leave Kansas to go engage in those other duties?

A. Yes.

Q. Now, did you return to the FBI Laboratory in late April?

A. Yes, I did.

Q. And is that when you received Government's Exhibit 664?

A. Yes.

Q. What date was that?

11343

Steven Burmeister - Direct

A. 664 was presented to me on the 28th of April.

Q. Did you examine it?

A. Initially, I did, yes.

Q. Okay. Can you tell the jury the steps that you take normally in examining a piece of evidence from a bombing crime scene when it comes into your laboratory.

A. Well, initially, the steps begin before I actually take the item out of the bag or box or however the container arrived to me in; that is, I will initially clean the area that I'm working with, using a two-solvent method. Basically, Cloroxing the area, which is a material that will break down any types of residues that are left behind, and next following it with a solvent such as acetone or methanol, whatever I happen to have available to me.

The next step is to place a piece of disposable paper down on the examination area; and at that point, I'm ready to

actually examine the particular specimen itself.

Q. What type of gloves do you wear when you're doing that?

A. During that entire process, I'm wearing disposable rubber gloves. And the practice that I use is a practice of two rubber gloves where I'll put on a pair of rubber gloves and a second pair over top of it.

Q. What's the purpose of the second pair of rubber gloves?

A. The first pair of rubber gloves is my working pair of rubber gloves. I can move things around. Once I'm ready to

11344

Steven Burmeister - Direct

work with the particular specimen itself, I will don the second pair of gloves. It's my second outer wrapper of protection.

Q. And do you use that second pair of gloves for just the item that you're examining?

A. Yes.

Q. Did you follow those steps prior to examining Government's Exhibit 664?

A. Yes, I did.

Q. And after you cleaned your table and laid out the paper, did you retrieve Government's Exhibit 664?

A. Yes, I did.

Q. Was it still in the sealed bag when you were conducting those preparatory steps?

A. Yes, it was sealed.

Q. And did you put on your second pair of gloves prior to opening the bag?

A. Yes, I did.

Q. Then what did you do?

A. I removed the item itself and placed it underneath a microscope and began the initial phase of my actual examination.

Q. Now, when you're looking at an item such as this under the microscope, what are you looking for?

A. The initial examination, the microscopic and visual examination is to look for particles of unconsumed material or

11345

Steven Burmeister - Direct

any particle that to me is something that I can physically remove and test further.

Q. Did you examine what we'll refer to as the front of 664, the side that has the red and yellow paint?

A. Yes, I did.

Q. Did you also examine the back of 664?

A. Yes.

Q. Okay. And did you know from your visual inspection what this surface is on the back of 664?

A. Yes. I did.

Q. What type of material is it?

A. It's a wood-like, fiberglass-type material.

Q. Have you compared Government's Exhibit 664 to an exemplar of the Ryder truck box?

A. Yes, I have.

MS. WILKINSON: Your Honor, we'd offer Government's 663 for demonstrative purposes

000 FOR DEMONSTRATIVE PURPOSES.

Mr. Tigar is willing to let it go in.

MR. TIGAR: We want it in for everything, your Honor.

THE COURT: Agreeable to you?

MS. WILKINSON: Of course.

THE COURT: 663 is received.

BY MS. WILKINSON:

Q. Now, Mr. Burmeister, let's start with your visual examination. Explain to the jury the differences. Tell them

11346

Steven Burmeister - Direct

what 663 is, first of all.

A. 66 -- I'm sorry, 663 -- 663 is a side portion, a cutout of the -- the side panel of a Ryder truck. Both the interior and the exterior are exemplar surfaces, as well as the thickness of the item is also the same.

Q. Did you compare 664 to 663?

A. Yes, I did.

Q. What did you note?

A. Well, the initial notation that the thickness is -- the first observation: There's definitely a layer removed. This particular layer on the interior, the white -- white and black layer that you see here is definitely not shown on this particular exhibit. The exterior surface is similar.

Q. And how is it similar?

A. Well, it's the same or similar color scheme and similar texture-type surface.

Q. Looking at 664, do you see this weaved area here?

A. Yes.

Q. Do you know what that is?

A. I don't know the chemical for -- chemical substance for it, but it's consistent, in my mind, with fiberglass-type material that I've seen.

Q. And does 663, this portion of the Morgan box of the Ryder truck, have fiberglass in it?

A. It's consistent with a fiberglass surface, yes.

11347

Steven Burmeister - Direct

Q. Now, obviously, 664 is a lot thinner than 663; is that right?

A. Absolutely.

Q. Okay. And what does that tell you about what happened to 664?

A. 664 took place -- a tremendous amount of trauma took place on 664, enough to sheer off a substantial layer of that particular material.

Q. And does that tell you anything about the back of 664 and its ability to retain any kind of residue or explosives?

A. It would serve as a surface to adhere explosive material penetrating or coming in contact with that particular surface.

Q. Why don't you hold that and you can keep both of those up there. I'll take this back.

Turning to the wood side of 664. Did you view that under the microscope?

A. Yes, I did.

Q. And when you first saw it, did you see anything on the surface?

A. A distant visual examination, there were some particles of spots that were white in color on the surface material spread across in a -- a varied deposit.

Q. And without conducting a microscopic examination or chemical examination, could you tell what those white particles were?

11348

Steven Burmeister - Direct

A. No.

Q. When you put it under the microscope, did you see more particles?

A. Yes, I did.

Q. What did you see when you first looked through the microscope on the wood side of Government's Exhibit 664?

A. Well, principally, what I -- I ended up doing was going sequentially back and forth -- sequentially going in a -- in a linear manner across the surface, looking for -- for individual particles that could actually be seen or physically removed off of the surface.

Q. Did you see a lot of particles?

A. Yes.

Q. How do you know which ones to remove for chemical analysis and which ones to leave there?

A. What I usually do is remove a particular particle and conduct a preliminary chemical test on that particular particle to determine whether or not it is a -- an oxidizer-type material.

Q. And why do you do that?

A. It's a way of screening hundreds and hundreds of different particles. I -- I use that as the preliminary method.

Q. Okay. Could there be other particles on there that have nothing to do with explosives?

A. Yes.

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Steven Burmeister - Direct

Q. And do you have to use your experience and judgment to determine which particles to analyze?

A. Yes.

Q. All right. At a certain point, did you take off particles and conduct the preliminary tests you've just described for the jury?

A. Yes. There were several --

Q. And what were your results?

A. Several of the particles that I removed had no response to the particular chemical test. There was one particular area that particles were removed and I had a very strong response from the chemical test.

Q. All right. Without getting too technical for us, tell us what that first initial chemical test was called.

A. Okay. It's a material -- it's a chemical called diphenylamine. The diphenylamine chemical, when it comes in

contact with an oxidizer, typically, something like an ammonium nitrate or potassium chlorate -- these are strong oxidizer materials. It will turn this clear solution into a deep blue, and that deep blue indication is an indicator that there's a positive response.

Q. When you got that positive response, that blue color, did you cause any photographs to be taken of Government's Exhibit 664?

A. Yes. At that point, I wanted to capture it at that point

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Steven Burmeister - Direct

in time; and so several photographs were taken in the area that these particles were removed from.

Q. Do you recall how many pictures you took?

A. Oh, probably over five. Maybe more than that. Quite a few photos were taken.

Q. Why did you take so many?

A. I wanted to capture it -- I was very excited about the particular finding of preliminary, and I wanted to capture it in time. I wanted to represent it both in color and also black and white.

Q. And have you brought some of those -- not all of those -- but some of those to court today to share with the jury?

A. Yes.

MS. WILKINSON: Your Honor, may I step forward to get the photographs?

THE COURT: Yes.

BY MS. WILKINSON:

Q. Agent Burmeister, can you look at these photographs? I'm going to start with 831. Do you recognize that?

A. Yes, I do.

Q. Is that one of the photographs you took of Government's Exhibit 664?

A. Yes, it is.

Q. All right. Did you take these photographs yourself?

A. Yes, I did.

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Steven Burmeister - Direct

Q. And is Government's Exhibit 830 another one of the photographs that you took?

A. Yes.

Q. Do you recognize it?

A. Yes, I do.

Q. How do you recognize it?

A. I recognize the surface and the particular particles that are on it.

Q. How about Government's Exhibit 832? Is that another of a series?

A. Yes.

Q. Is this a different magnification from the prior two photographs you've just discussed?

A. It's a different magnification, and it's also in black and white.

Q. What about 835? Do you recognize that?

A. Yes, I do.

A. Yes, I do.

Q. Is that another one of those photographs?

A. Yes.

Q. Did you take this photograph?

A. Yes, I did.

Q. And on this photograph, do you indicate the Q number of Government's 664?

A. Yes, I do.

Q. What is the Q number?

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Steven Burmeister - Direct

A. It's Q507.

Q. And finally, Government's Exhibit 834. Do you recognize that?

A. Yes, I do.

Q. Is that a photograph of the entirety of Government's Exhibit 664?

A. Yes.

Q. And do you have the Q number up at the top of that photograph?

A. Yes, I do.

Q. What is the Q number?

A. Q507.

Q. And do these photographs show what you saw under the microscope that day?

A. Yes.

MS. WILKINSON: Your Honor, we'd offer 831, 830, 832, 835, and 834.

MR. TIGAR: May I inquire briefly, your Honor?

THE COURT: Yes, sir.

MS. WILKINSON: Would you mind, Mr. Tigar, just keeping them in that order?

MR. TIGAR: I wouldn't mind at all.

MS. WILKINSON: Thank you.

VOIR DIRE EXAMINATION

BY MR. TIGAR:

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Steven Burmeister - Voir Dire

Q. Now, I'm going to show you first 834. Okay. Now, can -- can -- this is the whole thing; right? One side of the whole thing; correct?

A. Yes. One side of the entire --

Q. Of the entire specimen?

A. Right.

Q. Now, then, I'm going to move to 835; and I want to ask what part of the specimen are we looking at here.

A. This is a -- we're now magnifying the original one. We're moving closer to the surface, into the area that the particles were observed.

Q. All right. And what portion of it is that?

A. Oh, I would say it's the -- if we elevate this particular item as north and south, east and west, it would be the northeast quadrant of --

Q. The northeast. So I'm going to take the object now, 664, and turn it. We're looking at up -- where I'm pointing now?

The -- up in the --

A. It would be this northeast quadrant.

Q. That quadrant there. And that's what this is; correct?

A. Yes.

Q. That's for -- for reference, that's the flip side of the red part? Right?

A. Yes.

Q. Okay. And then 832 is just zeroing in on some of what

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you've had in 835; is that right? With more magnification?

A. We're moving closer to the surface.

Q. Same portion. It's the flip side of the red side; right?

A. This wooden side, yes.

Q. Yes. The wooden side. And when I say "the flip side of the red side," I mean that if we lay this down with the evidence sticker at the top -- right -- we're seeing something that's more or less on the other side of where the evidence sticker is located; is that correct? Please just go ahead and verify.

MS. WILKINSON: Your Honor, perhaps Agent Burmeister could hold it up to this photograph so he can compare it himself. I think it's a little difficult.

MR. TIGAR: I'm just trying to find out where these are from, your Honor, on this specimen.

THE COURT: I understand.

THE WITNESS: It's -- it's not directly on the opposite side of the evidence -- Government Exhibit 664 label. It's slightly askew of that.

BY MR. TIGAR:

Q. All right.

A. It's not exactly.

Q. Slightly how -- how far would you say? Would you -- about here? I'm pointing.

A. Let's see. It'll be a pretty good estimate. It would be

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Steven Burmeister - Voir Dire

about an inch away.

Q. Okay. But you are able to tell us that. That is to say, if I would ask more questions, you know where that is in relationship to the sticker; correct?

A. On the flip side?

Q. Yes.

A. On the flip side. I would have to have the object to make the comparison, but I would be able to.

Q. So you can do that for us.

A. Yes.

Q. Okay. And these pictures here are color versions of that same area, the flip side of the red side; correct?

A. On --

Q. On Q -- the red side of 664.

A. It's the wooden side of --

Q. Right.

A. -- Government Exhibit 664.

Q. Yes. But opposite the part which on the nonwood side is colored red; correct?

A. Yes.

MR. TIGAR: Okay. No objection, your Honor.

THE COURT: All right. The exhibits are received.

But I think we'll recess here.

MS. WILKINSON: Okay.

THE COURT: And the reason is that I think it will --

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all of us will better evaluate the testimony to be given here if we take it all at once, the direct and the cross, since we're getting into a technical area.

So you can step down now, Agent Burmeister. We'll hear from you on Monday.

MR. TIGAR: Excuse me. Were those received then? I didn't hear the Judge. I was crossing the room.

THE COURT: Yes.

MR. TIGAR: Thank you, your Honor.

THE COURT: Yes. And, members of the jury, I'm -- I will excuse you early now, as I said, because I think we can -- we're getting into an area of chemical testimony here, opinion-type testimony; and I think it's best understood by, as I said, hearing the direct testimony and the cross-examination. We won't be able to do all of that by 1:00, so it's better to take it all at one time, when we're all fresh on Monday morning, which I trust we all will be, because I'm going to excuse you now until Monday morning, so that you may have the weekend respite.

And of course, during this time, you will continue to do as you've been doing, recognizing that we have not completed the trial, of course, and that a good deal more evidence will be heard in the case. So you must keep open minds, avoiding discussion about the case or anything connected with it with all other persons, including other jurors, and continue to be

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very cautious and careful as you watch television, listen to the radio, read magazines, books, newspapers, and the like, to stay away from anything that could in any respect relate to the issues in the case. And again, you know, I'm not just talking about whatever might be out there about this trial. I'm talking about the whole subject matter. We're about to get into an area of chemical analysis, for example. Now, I don't suppose many of you have in mind reading chemistry books over the weekend; but if you did, don't. We want you to be able to decide this case on the basis of what is given to you in the evidence. I'm sure you understand that.

And with that caution -- or those cautions, members of the jury, we'll excuse you now until Monday, when we'll resume at 8:45. I hope you have a pleasant weekend.

(Jury out at 12:35 p.m.)

THE COURT: I'm at your suggestion here -- not exactly

your pleasure, but your suggestion as to the time of our recess. We have Mr. Kelley coming at -- I think he's to be here at 1:30, but -- and of course, we have this other matter that arose this morning. And then we have some matters that involve things that have to be done in chambers.

MR. TIGAR: Yes, your Honor.

THE COURT: You wish to make a suggestion --

MR. TIGAR: Well --

THE COURT: -- Mr. Tigar?

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MR. TIGAR: It is now 12:30, your Honor. May we have 1:45?

THE COURT: That's fine. To deal --

MR. TIGAR: To deal with whatever matters are going to be dealt with in open court. And I understand there's some evidentiary rulings that were to be discussed in chambers.

THE COURT: Right.

MR. TIGAR: And perhaps whatever order your Honor --

THE COURT: Well, I'd rather do the open court, of course, because that involves people who are here other than counsel.

MR. TIGAR: Yes, your Honor. If we could have till a quarter to 2, your Honor, then we'd be well fortified for the afternoon.

THE COURT: Do you have any objection to our taking up Mr. Kelley's motion first?

MR. MACKEY: That's Mr. Kelley regarding the Democrat Gazette?

THE COURT: Yes.

MR. MACKEY: No, that would be fine, your Honor.

MR. TIGAR: Your Honor, I'm sorry. I was thinking of a different Mr. Kelly. I understand that -- that Mr. Ronald Kelly is coming back.

THE COURT: Well, we have him, too.

MR. TIGAR: And something we'll deal with in open

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court; is that correct, your Honor?

THE COURT: Expect to, yes. I thought we would wait on him to get this -- not that lawyers are preferred ahead of other people, but I think we ought to get that motion out of the way.

MR. TIGAR: Yes, your Honor.

THE COURT: That's his only involvement.

Is that agreeable to the Government?

MR. MACKEY: It is, your Honor.

THE COURT: Okay. So we'll recess -- yes, Mr. Mackey.

MR. MACKEY: Yes. I received five additional defense motions this morning. I'll do my best to be ready this afternoon. There's a good deal of material.

THE COURT: All of them deal with matters which may or may not come into evidence, which is the criterion that is used for the nonpublic hearings.

MR. TIGAR: That's right, Judge. We are -- they are

... from ... Judge. We are ... they are all very short. We filed them under a blanket sealing motion, is my recollection, precisely for that reason.

THE COURT: Yes. Which I signed at the recess. So we'll go as far as we can, Mr. Mackey. I'm not going to disadvantage you or the other side, either, in taking things that you haven't had a chance to look at. I haven't looked at all of them yet, either. But -- but here in open court, we'll recess till 1:45.

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(Recess at 12:39 p.m.)

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Exhibit	Offered	Received	Refused	Reserved	Withdrawn
247	11334	11336			
663	11345	11345			
664	11292	11292			
664A-664B	11293	11294			
826	11323	11324			
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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 28th day of November, 1997.

Bonnie Carpenter

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