

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.

AA

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 103)

AA

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 3d day of December,
1997, in Courtroom C-204, United States Courthouse, Denver,
Colorado.

Proceeding Recorded by Mechanical Stenography, Transcription
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APPEARANCES

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REID NEUREITER, Attorneys at Law, 1120 Lincoln Street, Suite
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* * * * *

PROCEEDINGS

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

THE COURT: Please be seated.

Good morning.

MR. WOODS: Good morning, your Honor. Housekeeping
matter.

THE COURT: Okay.

MR. WOODS: During the testimony of Agent Smith, the
FBI, we played a tape recording of Lana Padilla and Josh
Nichols.

THE COURT: Yes.

MR. WOODS: That exhibit was 1652. The Court asked
for a transcript of that to be in the record, and that's D1652A
that we offer into evidence at this time.

THE COURT: Yes. It won't be a jury exhibit. It

will

be a part of the record.

MR. WOODS: Yes, your Honor. And the Government provided the transcript, so they consent to it.

THE COURT: Good. Thank you.

Are we ready to then proceed with Mr. Elliott?

MR. WOODS: Yes, your Honor.

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

THE COURT: Members of the jury, good morning.

JURORS: Good morning.

THE COURT: Once again, we appreciate the extra effort

that I know some of you had to make in view of the weather this morning, so thank you very much for your prompt arrival.

We'll continue with our trial. You will recall that yesterday when we recessed, we were hearing testimony from Mr. Eldon Elliott, and we'll resume with his testimony now.

Mr. Elliott, if you'll resume the stand under the oath

that you took with us yesterday.

THE WITNESS: Here?

THE COURT: Yes, please.

And, Mr. Woods, you may continue.

MR. WOODS: Thank you, your Honor.

(Eldon Elliott was re-called.)

DIRECT EXAMINATION CONTINUED

Eldon Elliott - Direct

BY MR. WOODS:

Q. Good morning, Mr. Elliott.

A. Good morning.

Q. When we took our recess yesterday at 5:00, I think we were to the point where you had talked to Mr. Dave Russell, the vice president of Ryder, who asked you to pull the contract on a certain truck number; is that correct?

A. Right.

Q. And he advised you not to talk to anybody and that an FBI agent would be contacting you; is that correct?

A. That's correct.

Q. Now, approximately what time did Agent Crabtree arrive at your business?

A. I believe it was around 4:00 or maybe just a little after.

Q. Okay. And did you have the contract there to give to him?

A. Yes, I did.

Q. Did you have all the paperwork, the inspection form, the reservation form, and everything?

A. Yes.

Q. Well, can you tell the jury, then, what you recall about this transaction. The rental agreement reflected that it was rented on April the 17th, Monday; is that correct?

A. That's correct.

Q. To a Mr. Robert Kling?

A. Right.

Eldon Elliott - Direct

Q. Now, had you met or talked with Mr. Kling prior to that date of April the 17th?

A. Yes, I had.

Q. Would you tell the jury what day that was, sir.

A. That was on April the 15th, on Saturday.

Q. Okay. What time do you open up your business on Saturday?

A. We open up at 8:00, but I normally get there around 7:30.

Q. And how long did he stay?

A. We stay -- we stayed till about 10 to 11:00.

Q. When you say "we," is your shop open, doing body work or anything, or what?

A. No, whichever's there, if I'm there, I stay later. If I have the gal there, well, she leaves earlier than what I do.

Q. Are you open just for the Ryder business, or is your whole shop open?

A. Just for Ryder on Saturday mornings.

Q. What time was it that you had any conversation with Mr. Kling that day?

A. When he came in to pay for the -- put the deposit down and make the reservation on the truck. He'd got a quote the day before, and he came in to pay so he could make a reservation to have the truck there.

Q. Do you recall about what time that was?

A. Probably come in about -- probably about a quarter till 9.

Q. And was he by himself that day?

Eldon Elliott - Direct

A. Yes, he was.

Q. What conversation did you have with him, as best you can recall?

A. He just said he had got a quote the day before and he would like to make a reservation on that. And I pulled up -- put it in the computer to pull up his name in the reservation to make the quote; and I said, "You want to put the \$80 down for the reservation?"

He said, no, he wanted to pay for the whole truck rental while he had the money so he didn't spend it so that the truck would be ready for him when he come to pick it up.

Q. Okay. And what was the total amount, if you recall?

A. I believe it was, with the deposit and everything, it was \$280.32.

Q. Now, you mentioned that you got into the computer to pull up the quote; is that correct?

A. Yes.

Q. And then you filled out some information when he paid the full amount?

A. Yes.

Q. I'm going to show you what's in evidence as Defense Exhibit 1709. And can you see that well enough on the screen, Mr. Elliott, to recognize the date on there?

A. Yeah, up in the right-hand corner, it's April the 15th of '95.

Eldon Elliott - Direct

Q. Okay. Now, is this the form that was printed out of the computer based on what information you put into it that day?

A. If this is the reservation, it would be. I'm not able to read whether that's reservation or quote.

Q. Let me hand you the original since this is such a light copy here.

MR. WOODS: May I approach the witness, your Honor?

THE COURT: Yes.

BY MR. WOODS:

Q. This is a copy we've been provided. Can you read that one?

A. Yes, I can. This is the reservation that I printed out for him.

Q. Now, what type of information did you obtain from Mr. Kling in order to put onto the form?

A. The -- just -- everything was on the form about except going in the reservation, I asked for his driver's license at that time; and then I printed this out to where it showed that he's paying the money and the balance due would be zero.

Q. Okay. What type of information did you take from his driver's license?

A. I believe I just took the address off his driver's license.

Q. Okay. And what address did you type in, Mr. Elliott?

A. The "428 Maple Drive, Redfield, South Dakota."

Q. Okay. And was that typed in correctly, or did you make any misspellings, or do you know?

Eldon Elliott - Direct

A. I don't remember.

Q. Is that the way it reads, "Maple Street"?

A. M-A-L-P Drive.

Q. M-A-L-P?

A. Yes.

Q. Okay. Do you recall whether or not it was Maple, or was it M-A-L-P?

A. I don't remember.

Q. You recall testifying earlier that you might have made a mistake typing it in?

A. Yes, I said I could have made a mistake.

Q. Do you recall whether or not you actually saw the driver's license?

A. Yes, I did.

Q. All right. I take it that's your practice and procedure, to get the information from the driver's license, rather than have it orally related?

A. Yes, it is. Because I'm not a good speller, and so I always ask for a driver's license to use it.

Q. And that was a South Dakota driver's license, as best you recall?

A. Best I recall.

Q. Okay. Now, did -- how did Mr. Kling pay you?

A. In cash.

Q. Okay. And full amount was \$280-and-some-odd cents?

Eldon Elliott - Direct

A. Yes, it was.

Q. How long did the transaction take between you and Mr. Kling there in the office that day?

A. I would say probably 10 to 15 minutes.

Q. So you had a chance to observe him fairly closely?

A. Yes.

Q. Just the two of you in the office at that time?

A. That's correct.

Q. Okay. Do you recall how he was dressed that day?

A. All I remember he had on was just a T-shirt 'cause I've got a counter kind of like this here, and he's standing on the other side; and so all that was showing was just the top part of his -- upper part.

Q. Yes, sir. Now, later on, the FBI gave you a photo lineup, and you identified Mr. McVeigh; is that correct?

A. Yes, sir.

Q. Okay. Based upon you having seen him and talked with him that day, Saturday, and then also on Monday; is that correct?

A. That's correct.

Q. Okay. Do you recall any other conversation that happened there in the office that day, Saturday, that would be helpful to the jury?

A. I told him at that time that I'd noticed that he didn't have -- take no insurance on the truck. And he says -- he had told me that, no, he didn't need insurance 'cause he was a good

Eldon Elliott - Direct

driver, he wasn't going that awful far and he had drove the big trucks out at Fort Riley and he didn't need insurance.

And I said, "At this time, I need to explain to you, if you're not taking insurance, that you are liable for the damage on the truck or the cost of the truck if it was totaled out."

And he said, "I understand that."

And I said, "Okay. In case you change your mind, all you have to let us do -- let us know on Monday when you come in, and we can add the insurance to the truck."

And he said, "Okay. Thank you."

Q. Now, is that your policy, you don't require insurance on the rental; is that correct?

A. They don't have to take the insurance, but we have to explain to them that they are responsible and then it's -- they sign that when they sign the contract that they're responsible for the truck if they don't take insurance.

Q. Okay. Now, did Mr. Kling sign this document that you prepared that day, Saturday?

A. Yes, he did.

Q. Sign that in front of you?

A. Yes, he did.

Q. Okay. Now, when was the next time that you had any contact with Mr. Kling?

A. On Monday.

Eldon Elliott - Direct

Q. And is that April the 17th?

A. Yes, it was.

Q. Do you recall approximately what time it was?

A. I'm going to say it was probably about 4:20, 4:25 in the afternoon.

Q. Okay. Now, that form that you filled out on Saturday that Mr. Kling signed, did you leave that for Vicki Beemer, your employee there, for Monday to book the reservation?

A. Yes, I did. Mr. Kling got a copy, and then two copies is kept for us.

Q. Okay.

A. And they was there for Vicki on Monday morning.

Q. Was there a time specified that the truck was to be ready for Mr. Kling?

A. Yes, it was.

Q. What time was that, sir?

A. He wanted it around 4:20 in the afternoon.

Q. Okay. Was that on your reservation form, did it say 4:20?

A. I don't believe it puts a time on.

Yes, on the thing it was for 1600 hours on 4-20 -- on 4-17 of '95, was supposed to pick it up at 1600 hours.

Q. And that's 4:00?

A. That's 4:00.

Q. Okay. And that's the information, then, that you left for Vicki for Monday morning, to make sure a truck was available

Eldon Elliott - Direct

and to be available to rent it; is that correct?

A. That's correct. I left a copy just like this for her.

Q. Okay. Now, you mentioned to the jury that you saw Mr. Kling that afternoon at 4 what?

A. I would think it was around 4:20, 4:25, something like that.

Q. Where were you that afternoon?

A. I was out in the shop working.

Q. By "working," what were you doing?

A. Well, I was working on a car, but I don't remember just what it was I was doing at that time.

Q. Okay. Doing mechanic work or bodywork?

A. It would be bodywork.

Q. Okay. And how did you have an occasion to come into the office, if you did?

A. Vicki Beemer come out with the walk-around inspection sheet and said, "You need to come in and inspect this truck for me," because we always inspected the trucks.

Q. Okay.

A. And so I walked in the office with her and took the

A. AND SO I WALKED IN THE OFFICE WITH HER AND TOOK THE inspection sheet and --

Q. Did you see Mr. Kling at that time?

A. Yes, I did.

Q. Did you have a short conversation with him at that time?

A. Yes, I did. I spoke to him and asked -- I said, "I got to

Eldon Elliott - Direct

go out and do the walk-around. Would you like to come out with me?"

And he says, "No. That's okay. I'll just wait here."

Q. Did you mention anything to him about insurance?

A. Yes, I did. I said, "Did you change your mind? Would you like insurance?"

And he said, "No, I don't want the insurance."

Q. Now, when you mentioned the insurance, was that because you recognized the individual from the prior --

A. Yes.

Q. -- occasion?

A. Yes, it was, your Honor.

Q. Was there any question in your mind that was the same individual?

A. No, it wasn't.

Q. And did you go outside and do the walk --

THE COURT: I don't know if the question and the answer matched there. No, it wasn't the same individual, or no question?

MR. WOODS: I'm sorry, your Honor.

BY MR. WOODS:

Q. My question was was there any doubt in your mind that it was the same person.

A. No, there wasn't no doubt in my mind that that was the same person.

Eldon Elliott - Direct

MR. WOODS: Thank you, your Honor.

BY MR. WOODS:

Q. Now, did you go out and do the walk-around, Mr. Elliott?

A. Yes, I did.

Q. Okay. Did Mr. Kling go out with you?

A. No, he did not.

Q. Was there a slight mist or slight rain at that time?

A. Yes, it was just a real slight mist. It was so slight, you know, I wouldn't call it a rain, but it was a real light mist.

Q. Do you recall what the temperature was? Was it cold, hot, whatever?

A. Well, it wasn't hot. It was cool in the spring. It wasn't hot, but it wasn't real cold, either.

Q. Okay. Okay. How long would it take you to do the walk-around?

A. Probably a minute or two.

MR. WOODS: May I approach the witness, your Honor?

THE COURT: Yes.

BY MR. WOODS:

Q. Mr. Elliott, I've handed you what is admitted into evidence as Defense 1712. Do you recognize that copy, sir?

A. Yes, I do.

Q. And would you tell the jury what that copy is in your business records, how you utilize it.

A. Okay. This is a safety and walk-around inspection. On the

Eldon Elliott - Direct

one side it has the pictures of the big trucks, the pictures of the smaller trucks, the tow dolly, and the trailers that the cars go on. And we note on there if there's any scratches on the truck or any marks or anything on it. Basically when they're not taking insurance, we make sure of every little scratch that's on that truck, so when they get to the other end, they're not trying to charge them for something they did not do.

On the other side of the sheet is the safety questions like don't drive too close and hit a car and wet pavement be careful and cutting corners and under things too low. And they have -- read that and initial that and then sign it down at the bottom.

Q. Okay.

A. And then they get a copy of that to go with them.

Q. Did you make any markings or any notations on the form concerning the condition of the Ryder truck?

A. Yes, I did. There was little, light like limb marks down both sides of the truck and a little mark on the left front bumper; and then down below here, I circled where it says "scratches" and such as that on the truck.

Q. Did you say "limb marks"?

A. Well, like tree-limb marks that might have scratched the paint real lightly.

Q. Yes, sir.

Eldon Elliott - Direct

A. No damage, but just real light marks; but I indicated it.

Q. Yes, sir. How long did that take you to do the walk-around and inspection?

A. Probably about 1 to 2 minutes.

Q. What did you next do?

A. Then I walked back inside and showed him the inspection slip and then give it to Vicki and told him to have a safe trip and if he was ever in the area and we could help him again, why, come in and see us.

Q. When you were in the office, how many people did you observe in the office?

A. It was Mr. Kling standing there and my mechanic, Tommy Kessinger, setting there. There was another gentleman standing in there with Mr. Kling, and Vicki Beemer was in the office,

beside myself.

Q. Okay. And did you have any conversation with the other individual, or just with Mr. Kling?

A. Just with Mr. Kling.

Q. Okay. When you were out making the inspection, did you notice an automobile outside?

A. They was an automobile setting there, yes.

Q. Okay. And can you tell the jury, just give a description as best you recall at that time.

A. It was -- I just took a short glance at it, and it was a -- what I could remember, it was either a medium-size or a

Eldon Elliott - Direct

full-size, light-color car.

Q. Okay. And were there any other customers inside the office other than those two individuals?

A. No, they was not.

Q. Did you recognize that car as belonging to one of your employees?

A. No, it wasn't.

Q. Okay. Now, let me ask you a question. Back on Saturday, did you see whether or not Mr. McVeigh came in an automobile, or were you inside the office all the time?

A. I was inside the office when he came in. And just as he got ready to leave, the phone rang, and I answered it. And I did not see what kind of car he was driving. In our office, our windows is a little high. Unless you're standing up and looking, you can't see out of them.

Q. Excuse me, I didn't mean to interrupt you.

A. And I did not see what kind of car. I just heard the door shut and car start up.

Q. That was my next question. Did you hear anything to indicate that there was a car outside?

A. Yes, I did.

Q. Okay. Now, how far are you located out west of town there?

A. It's just right at a mile or maybe just a fraction. I call it a mile out of town. It might be just a little bit over a mile from Washington Street, the main street in town.

Eldon Elliott - Direct

Q. Did most people walk, or come by automobile when they come to your business?

A. Well, they mostly come by automobiles. We have had some walk. We have had some ride a bicycle, but the majority comes by car, yes.

Q. So you're pretty much a mile out, isolated there; is that correct?

A. That's right.

Q. Are you up on sort of a hill?

A. Yes, we're on a side hill. Our building sets probably 12 foot above the road, and then it goes into a nice, big, tapered bank back up. I have the top part leveled off for the Ryder trucks to get up there.

trucks to set up there.

Q. Okay. Now, back on Monday, again, when you were in the office there, it was a very short period of time, I take it; is that correct?

A. That's correct.

Q. Did you observe Mr. Kling have any conversation with the other individual?

A. When I walked back in, they was talking. I did not hear what they was saying.

Q. Weren't paying any attention, I take it; is that correct?

A. Wasn't paying no attention.

Q. Did you give a description of the other individual in any form or fashion?

Eldon Elliott - Direct

A. No. Not really. I just took a glance at him. And the hat that he had on, and I can't tell you what he really looked like.

Q. Okay. Could you tell the jury whether or not he was shorter or taller than Mr. Kling?

A. To be truthfully, no. He might have been just a little shorter than Mr. Kling.

Q. And how do you make that conclusion?

A. By kind of my height and looking at him as I walked by.

Q. How tall are you, sir?

A. About 5' 10".

Q. Okay. And was that the last time you saw Mr. Kling?

A. Yes, it was.

Q. Now, did Mr. Crabtree ask you pretty much those same questions when he came to visit you that afternoon, Wednesday afternoon, the 19th?

A. Yes.

Q. Okay. And you provided the contracts and things to him?

A. Yes, I did.

Q. Now, on that contract you have in front of you, is that the one that has Mr. Russell's name written at the top and a phone number?

A. Yes, it is, sir.

Q. After you had the interview with Mr. Crabtree that afternoon, where did you next go?

Eldon Elliott - Direct

A. He had the interview with me, and then with -- I believe it was Vicki and then Tom.

Q. These were all separate; is that correct?

A. Yes, that was all separate. And then he said we had to go to -- with him to Topeka to be fingerprinted.

Q. Did he explain to you why you were going to be fingerprinted?

A. Yes.

Q. And what was that explanation?

A. He just wanted all of our fingerprints so that in case of any fingerprints on the paper or anything, it wouldn't be --

for us, our fingerprints.

Q. They could eliminate you as the Robert Kling; is that correct?

A. That's correct.

Q. And did you get to Topeka?

A. No, we did not. We started out, and we just got out of town a little ways, and he got a phone call and said that we needed to go to Fort Riley to the CID office, they was going to do the fingerprinting there and then they was flying a sketch artist in.

Q. And how long did you stay there at Fort Riley in the CID office? That evening.

A. I'm going to say it was probably two, two-and-a-half hours, something like that, maybe.

Eldon Elliott - Direct

Q. So did you leave and go home before the sketch artist arrived?

A. Yes, we did.

Q. What time did you leave, approximately?

A. Well, I'm going to say we probably left Fort Riley about 7, 7:30, somewhere along in there.

Q. Did Mr. Crabtree interview you separately out there at Fort Riley before you went home that night?

A. I was interviewed separately. I don't really remember who it was that interviewed me that night out there.

Q. Did more agents arrive on the scene there at the CID office?

A. They was the next morning, but I don't know if they was that evening.

Q. At any rate, you went home at sometime on the evening of the 19th; is that correct?

A. That's correct.

Q. What were you told about coming back for the sketch artist?

A. They said, "Go home and get a good night's sleep, and we'll call you when the sketch artist get in and you'll come back out in the morning."

Q. Did you receive a phone call?

A. That evening?

Q. Yes, sir.

A. I believe it was two or three, sir.

Eldon Elliott - Direct

Q. I was going to ask you, did you receive more than one?

A. Yes.

Q. Was what the nature of the calls?

A. Well, first off, they wanted to know what the number was on the top of the -- this inspection form, and I told them. So then later on, they called again and wanted to know what the other number was on the top of the inspection form.

Q. What is the other number?

A. The other number was Dave Russell's home phone number.

Q. And what was the first number?

A. The first one was his office phone number.

And then we got another call about -- probably 3:30, 4:00 in the morning and said we needed to -- I needed to meet Vicki at the shop and bring her out to Fort Riley, so I came in and we went from the shop to Fort Riley. Vicki's husband brought her in. So they drove out, and I drove out to Fort Riley to the CID office.

Q. And when you got to the CID office, were you interviewed again by the FBI?

A. Yes, I was.

Q. And was that separate, away from the other individuals, Miss Beemer -- was Mr. Kessinger out there at that time?

A. Mr. Kessinger I think was already out there when we got there with the sketch artist.

Q. When the FBI interviewed you, was it separate, you were

Eldon Elliott - Direct

apart from the other people?

A. Yes, it was.

Q. How long did you stay there at that time?

A. Well, I believe we got to leave Fort Riley that morning about -- I got to leave about 7:00.

Q. Okay. And did you meet privately with the sketch artist and take part in compiling a sketch?

A. Yes, I met separate with him. And he asked me some questions, and then he showed me a sketch that he had made with Mr. Kessinger and asked me if I could add anything to it, and I says no.

Q. That was my next question. Did you take part in compiling the sketch, or had it already been done by the time that they met with you?

A. Yes, it had already been done, sir.

Q. Let me show you what's in evidence as D1699 and ask if you recognize this as the sketch that was shown to you?

A. Yes, it was.

Q. That's one that was shown to you that night of the 19th?

A. Well, I can't say this is exactly the one, but I think that's the one, a picture of the one I seen.

Q. Okay. And you were asked if you could add or delete anything from the sketch?

A. Right.

Q. And what did you tell them?

Eldon Elliott - Direct

A. I said, no, that looks -- that looks like what it was.

Q. Okay. Were you shown another sketch that evening, or just this one?

A. I think it was just this one.

Q. You remember who the sketch artist was, what his name was?

A. No, I don't. They flew him in from Washington, D.C.

MR. WOODS: Your Honor, may I approach the witness?

THE COURT: ..

THE COURT: Yes.

BY MR. WOODS:

Q. Mr. Elliott, I'm going to hand you what's been marked for identification purposes only as D1707 and D1708 and ask if you have seen either one of those before, sir.

A. Yes, I had.

Q. Where did first see -- what -- can you tell us which one you saw, or did you see both of them?

A. I seen two copies that day.

Q. Okay. And were the copies one in color and one black and white?

A. I think they was both black and white.

Q. Okay. And who showed you the items?

A. I don't remember all the names. We was in Oklahoma City, and Jon Hersely was there.

Q. This agent right over here on the end of the table, Mr. Hersely?

A. Yes.

Eldon Elliott - Direct

Q. Okay. And who else?

A. And prosecuting attorney, and they was a lady there.

Trying to remember if they was two ladies. I don't remember their names.

Q. This is before you went to the grand jury; is that correct?

A. Yes, I believe it was.

Q. And was it a photo lineup that you were being shown?

A. Pictures like this.

Q. And when you were shown the photo lineup, did you make an identification?

A. Yes, I did.

Q. And did you identify Timothy McVeigh?

A. Yes, I did.

Q. And was that the Robert Kling that you had had two occasions to meet with and talk with?

A. Yes, it was.

Q. Okay. And are those copies of the -- can you look at those and see if those are the copies of photo lineup that you were shown?

A. I'm sure they're copies of it, yes.

Q. There's a signature on the back of the black-and-white one. Is that your signature, or is that just a notation that's been given to us?

A. No, that's my signature and my initials.

MR. WOODS: Okay. Your Honor, we would offer into

Eldon Elliott - Direct

evidence 1607 and '8. Been provided by the Government. One of them's a color copy and one's black and white.

MR. MEARNS: We have no objection, your Honor.

THE COURT: All right. They're received. Is it 1607?

MR. WOODS: I'm sorry, your Honor. It's 1707 and

MR. WOODS: I'm sorry, your honor. It's 1707 and 1708.

THE COURT: All right. Received.

BY MR. WOODS:

Q. Now, Mr. Elliott, I take it because of the short time you saw the second person, you cannot make an identification of him in any form; is that correct?

A. No, I cannot.

MR. WOODS: Okay. Mr. Elliott, thank you very much, sir. Nice to have met you.

THE COURT: Mr. Mearns.

CROSS-EXAMINATION

BY MR. MEARNS:

Q. Good morning, Mr. Elliott.

A. Good morning.

Q. You told us yesterday afternoon that you've been in the body-shop business for about 27 years?

A. In my own business 27 years.

Q. How long have you been in the body-shop business?

A. I worked for Chevrolet garage for 16 1/2 years before I opened my own shop.

Eldon Elliott - Cross

Q. So you've had your own shop now for about 10 years?

A. No, I've had my own shop 27 years, so altogether about 43 years.

Q. And how long have you been in the Ryder rental business?

A. I think it's around six or maybe going on seven years now.

Q. I want to direct your attention first to the morning of Saturday, April 15, that you've spoken about a little bit this morning, okay?

A. Okay.

Q. You told us that Robert Kling or Bob Kling came in at about 8:45; is that right?

A. Somewhere between 8:45 and 9:00, something like that.

Q. And you spent about 10 or 15 minutes with him?

A. Yes, I did.

Q. And during that 10 or 15 minutes, would it be fair to say that you had an opportunity to observe his face from a very close distance?

A. Yes, it was.

Q. And you had an opportunity to look in his face in good lighting?

A. Right.

Q. And you had an opportunity to talk with him at some length about this Ryder rental truck that he was going to get?

A. Yes, I did.

Q. And it's based upon the fact that you were able to look at

Eldon Elliott - Cross

him so long that you've been able to identify Mr. Kling as in fact being Mr. McVeigh; is that right?

A. That's right.

Q. Now, on the afternoon of April 17, the next Monday, you were asked to do -- you were asked by Ms. Beemer to do the walk-around for that truck; is that right?

A. That's right.

Q. About how long do you think you were in the office on your way through the office to go out to do the walk-around that day?

A. Probably not over a minute or two.

Q. And about how long were you in the office on your way back after you'd finished the walk-around, when you came back into the office to give the papers back to Miss Beemer?

A. Probably not quite that long.

Q. Less than a minute on that?

A. Probably around a minute or less.

Q. And during the time that you were in the office, you saw that Ms. Beemer was behind the counter at her desk?

A. When I came back in, yes.

Q. And Mr. Kessinger was sitting in a chair in the office, both times that you walked through the office; is that correct?

A. Yes, he was.

Q. And Mr. McVeigh was standing at the counter; correct?

A. Yes, kind of at the end of the counter.

Eldon Elliott - Cross

Q. And when you walked through the first time, when you walked through the office the first time, you immediately recognized Mr. McVeigh as the same man you had seen Saturday morning?

A. Yes, I did.

Q. Now, on which walk through the office -- on the way out to do the walk-around or the way back -- on which of those occasions did you see the other person in the office?

A. I took the glance at the second person when I walked out -- or when I first came in to do the walk-around, just a glance at him; and when I come back in, I glanced at him as I turned and handed the walk-around to the -- to Vicki and talked to Mr. McVeigh.

Q. When you say "a glance," how long are you talking about? Just a second?

A. Oh, probably less than a second.

Q. Less than a second that you saw him?

A. Right.

Q. And the only thing that you can recall about him is the hat that he was wearing; is that correct?

A. That's right.

Q. Describe that hat for us, please.

A. It was a white hat with like lightning, blue lightning strikes going back the side. And it was kind of unusual. That was the only reason I really glanced at it, because it was unusual.

Eldon Elliott - Cross

Q. So the white was in the back of the baseball cap?

A. It was all kind of white with just blue lightning stripes going back the side.

Q. So it was white and blue with the blue strikes going towards the back?

A. Right.

Q. Now, with respect to this -- the other person that you saw, did you talk to him on April 17?

A. The second person?

Q. Yes.

A. No, I did not.

Q. And did he speak to you at all?

A. No.

Q. And did you see him speak to Ms. Beemer?

A. Not to Miss Beemer, no.

Q. And did you see him speak to Mr. Kessinger?

A. No.

Q. And did you see him speak to Mr. McVeigh?

A. They was talking when I came back in, but I did not hear what they said.

Q. Where was -- where was this other person standing?

A. As you walk in my shop, I've got a desk and counter; and the counter goes across the front and turn down the end kind of like this. Mr. McVeigh was standing right at the corner of my counter, leaning on it. The other guy was standing in the

Eldon Elliott - Cross

corner to the right of my counter, and I walked between the two.

Q. Okay. So was this other person closer to Mr. Kessinger or was -- let me ask it a different way.

Was Mr. McVeigh closer to Mr. Kessinger, or was this other person closer to where Mr. Kessinger was sitting?

A. Well, they would probably be both about the same distance because he was kind of standing in the corner of the office, and McVeigh was standing right at the corner of the counter. So maybe Mr. McVeigh was a little closer to Tom.

Q. Can you tell us what color this other person's hair was?

A. No, I cannot.

Q. Can you tell us whether he was wearing a jacket?

A. I didn't pay no attention to that.

Q. Can you tell us what color his pants were?

A. No, I can't.

Q. Can you tell us how much he weighed?

A. No.

Q. Mr. Woods asked you about a couple of occasions on when you spoke to Agent Crabtree or other FBI agents on April 19 and April 20. Do you recall those questions?

A. Right.

Q. Now, Mr. Crabtree came to your office, you said, about 4:00, 4:30 on April 19; correct?

A. Right.

Eldon Elliott - Cross

ELDON ELLIOTT - CROSS

Q. And he interviewed on that occasion; right?

A. Right.

Q. And do you recall telling Agent Crabtree that you only remembered one person, Mr. Kling, being in the office on the afternoon of April 17?

A. I don't remember telling him that, no.

MR. MEARNS: Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. MEARNS:

Q. Mr. Elliott, if you would take a look at that, and in particular there's one sentence highlighted there. If you'd read that to yourself.

Does that refresh your recollection that you told Agent Crabtree on the afternoon of April 19 that you only recalled one person being in the shop, one person, Mr. Kling, or Mr. McVeigh, on the afternoon of April 17?

A. I still don't remember telling him that.

Q. With respect to the other person, Mr. McVeigh and the other person that was there, that you say was there on April 17, you don't know if they were actually together or not, do you?

A. I can't say that they was actually together, no.

Q. You didn't see them come into the office together?

A. No, I did not.

Q. You didn't see them leave together?

A. No, I did not.

Eldon Elliott - Cross

Q. And with respect to the car that Mr. Woods asked you about, you don't know if that was the car that Mr. McVeigh arrived in that day?

A. No, I don't know that was the car.

Q. In fact, you don't know how Mr. McVeigh got to your shop on April 17?

A. That's right.

Q. In fact, you -- on April 15, on Saturday, you heard him get into a car, close the door and drive away; is that right?

A. That's right.

Q. But on April 17, you don't know whether he walked to the store or whether he was driven to your shop; is that right?

A. That's right.

Q. And would it be fair to say that cars come and go quite frequently from your shop there, from the body shop?

A. Sometimes.

Q. People are coming there to drop off cars to get bodywork done; right?

A. Right.

Q. And people are leaving cars there sometimes overnight; right?

A. Sometimes.

Q. Mr. Woods asked you a question about being shown that sketch, that one sketch that he showed to you. Do you recall that question?

Eldon Elliott - Cross

A. Right.

Q. And you were shown that sketch in the early morning hours of April 20; is that right?

A. Yes, it was.

Q. And the -- Mr. Rozycki or the sketch artist didn't show you the sketch of any other person, did he, that morning?

A. No, he did not.

Q. And just one final area. On April 19, when Agent -- Agent Crabtree called before he showed up; is that right?

A. On the 19th?

Q. Yes. Excuse me, on the afternoon of the 19th?

A. Yes, he did.

Q. And among other things, Agent Crabtree told you to make sure none of the employees left; is that right?

A. Yes.

Q. And to try to identify -- to find the documents that related to the Kling rental; is that correct?

A. That's correct.

Q. And he also asked you to try to find out who else could have seen the Mr. Kling who rented the truck; is that right?

A. That's right.

Q. And prior to Agent Crabtree arriving, you had already identified Mr. Kessinger as the other person -- that is, besides you and Miss Beemer -- who could have seen Mr. Kling on the afternoon of April 17; right?

Eldon Elliott - Cross

A. Right.

Q. And you did that, you were able to do that by having Ms. Beemer speak to Mr. Kessinger about the rental; right?

A. Right.

MR. MEARNS: No further questions, your Honor.

THE COURT: Any follow-up?

MR. WOODS: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. WOODS:

Q. Mr. Elliott, when -- Mr. Crabtree asked you not to talk amongst yourself before he got there; is that correct?

A. I don't remember if he said not to talk -- 'cause he wanted to find out who was -- could have seen anybody in there.

Q. Okay. Did you and Mr. Kessinger and Miss Beemer talk amongst yourselves about the description of the individual --

A. No, we just -- before Mr. Crabtree got there? No, we did not. We talked about the contract, and she started asking the employees who was in there, and that's when she found out Tom was setting in there.

Q. And when Mr. Crabtree interviewed you the afternoon of the 19th and the early morning hours of the 20th, was that on your recollection, or what somebody else had told you?

A. Would you repeat that?

Q. Yes, sir. When Mr. Crabtree interviewed you on the afternoon of April 19 and the early morning hours of the 20th,

Eldon Elliott - Redirect

were you giving him your memory of what you recalled, or was it something that somebody else had told you?

A. No, it was my memory, sir.

Q. Okay. Now, the prosecutor asked you about possibility of Mr. McVeigh walking there that afternoon of the 19th (sic). When you saw him and asked him about had you changed your mind about insurance, was his face wet, or was his upper clothes wet?

A. No, it was not.

Q. And it was misting out at that time?

A. Yes, it was.

Q. Okay. Now, Mr. Mearns, the prosecutor, asked you about this individual. Did you see him leave with Mr. McVeigh? You had gone back to the shop; is that correct?

A. That's right.

Q. Do you know whether or not your business conducted any other rental right after Mr. McVeigh left with the other individual that was there?

A. No, it did not.

Q. Okay. Did it conduct any other business, auto repair or body shop?

A. Not to my knowledge.

Q. Did you see that individual anytime after there in your shop from 4:20 on?

A. No, I did not.

Eldon Elliott - Redirect

Q. What time do you close up?

A. Closed at 5:00.

Q. You recall that light-color sedan being in the lot when you closed up at 5:00?

A. No, it was not.

MR. WOODS: Okay. Thank you, very much, sir.

Appreciate it.

MR. MEARNS: No further questions, your Honor.

THE COURT: Mr. Elliott --

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

THE COURT: Is that agreed, he's excused?

MR. MEARNS: Yes, your Honor.

THE COURT: He may be excused.

All right. You're excused.

THE WITNESS: To go home, your Honor?

THE COURT: Yes.

MR. NEUREITER: May Mr. Bodley be excused to try and procure the presence of a witness?

THE COURT: Yes.

MR. WOODS: Mr. Rozycki is the next witness.

THE COURTROOM DEPUTY: Raise your right hand, please.
(Raymond Rozycki 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: Raymond T. Rozycki, R-O-Z-Y-C-K-I.

THE COURTROOM DEPUTY: Thank you.

THE COURT: Mr. Woods.

MR. WOODS: Thank you.

DIRECT EXAMINATION

BY MR. WOODS:

Q. Good morning, Mr. Rozycki. My name is Ron Woods. I'm one of the lawyers that was appointed by the district judge to represent Terry Nichols in this case.

You and I have never met; is that correct?

A. That's correct.

Q. Tell the jury what your occupation is, sir.

A. I'm employed by the FBI.

Q. Yes. As what?

A. And my job title there is a visual information specialty, and I work as a forensic artist.

Q. And would you tell the jury what a visual information specialty is in general terms.

A. In this case, a forensic artist is an artist who uses his artistic skills during the course of criminal investigation or trial.

Q. And how long have you held this position, sir?

A. 16 years.

Q. And what is your education background and your experience background that qualified you for this position?

Raymond Rozycki - Direct

A. I have a degree, a bachelor of fine arts in painting and printmaking. I came to the FBI during the course of my work there, had much on-the-job experience and was trained at the FBI school for composite art.

Q. Did you work in the art field before you joined the FBI?

A. Yes, sir, I did.

Q. And what type of experience did you have at that time?

A. I've had a -- since about 1975, I've worked as a fine artist. I've taken classes, additional classes, and had my own studio and done my own work, had some individual shows and things of that sort.

Q. Okay. When you had your own studio, what type of work were you doing at that time? What type of artistic work?

A. Figure and portrait work.

Q. So how many total years do you have after your degree in fine arts of doing this type of work, sir?

A. My degree was in '81, so that's --

Q. 16 years' experience?

A. About.

Q. Okay. Approximately how many cases have you worked on where you have done sketches for the agents in their investigation?

A. Now it's roughly in the area of . . . it's between 25 and 30.

Q. Okay. I want to call your attention back to April of '95

Raymond Rozycki - Direct

in connection with the Oklahoma City bombing case. Did you work -- did you have an occasion to work on that case, sir?

A. Yes, sir.

Q. Will you tell the jury when you first received word that your services were needed in connection with that investigation.

A. That was on the 19th when I was at home and told that I needed to get to Kansas.

Q. Was that the day of the bombing, to your recollection?

A. I'm not quite sure of the date of the bombing.

Q. You haven't kept up with it since that time, I take it?

A. No, I haven't.

Q. Been working on other cases?

A. Yes, sir.

Q. Approximately what time on April the 19th did you receive word that you needed to go to Kansas?

A. That would be around 8:00, I believe. Washington time.

Q. Okay. And how did you get to Kansas, if you did?

A. I took a small plane. They had a plane waiting for me at National Airport, and took a small plane to Kansas City, and a state trooper drove me to Junction City.

Q. Was this an FBI plane?

A. I'm not really sure.

Q. When you say "a small plane," you didn't catch a commercial plane; is that --

Raymond Rozycki - Direct

A. No, sir.

Q. You get to Kansas City, and a state trooper takes you to Junction City?

A. To the fort there. Fort Riley, Kansas.

Q. Fort Riley? And who do you meet with at that time?

A. Agent Crabtree and Agent Smith, I believe.

Q. Is that Steve Smith?

A. Yes, sir.

Q. Just two agents?

A. Correct.

Q. What was the purpose of meeting with the agents?

A. The agents are the first on the scene, and they make the assessment of whether my services are necessary. And they had the information -- any information that I would need in starting the drawings.

Q. Did you obtain any information from Agents Crabtree and Smith about the overall status of the investigation at that time?

A. Not really. No. I tried to limit what I got from them to the specific job that I had to do.

Q. What type of information, then, did you obtain from Agents Crabtree and Smith?

A. Their assessment of -- excuse me -- the witnesses -- telling me who the witnesses were. Their assessment of who was

the best one -- who had the best recollection, and the order to

Raymond Rozycki - Direct

start with on those witnesses.

Q. All right. And after meeting with those two agents, did you then meet with some witnesses?

A. Yes, I did.

Q. Who did you meet with first?

A. Mr. Kessinger.

Q. Did you meet with him separately?

A. No. No. There were two agents present initially and in the room with me and Mr. Kessinger.

Q. How long did the agents stay in the room with you?

A. Roughly a half an hour.

Q. Did you then continue to meet with Mr. Kessinger to draw your sketch?

A. That's correct.

Q. How long did that take?

A. Two to three hours.

Q. Can you give the jury just a brief description of what process you go through when you meet with a witness in order to draw a sketch from their memory?

A. Initially we sort of get to know each other, exchange pleasantries, and I tell them about the process that we'll go through, show them the forms, the form and the book --

Q. By "book," what do you mean?

A. It is the catalogue of facial -- the FBI facial catalogue.

MR. WOODS: Okay. May I approach the witness, your

Raymond Rozycki - Direct

Honor?

THE COURT: Yes.

BY MR. WOODS:

Q. Mr. Rozycki, I've handed you a item marked Defense Exhibit 1730. Is that the number that's in the right corner?

A. That's correct.

Q. And have you seen exhibits identical to that before?

A. Yes.

Q. And . . .

MR. WOODS: We would offer that into evidence, your Honor, before we begin talking about it, 1730.

MR. MACKEY: No objection.

THE COURT: Received, D1730.

BY MR. WOODS:

Q. Now, is that the FBI's facial catalogue that you use in connection with interview of witnesses?

A. That's correct, yes.

Q. And without describing it in detail, tell the jury briefly what the facial catalogue contains.

A. It contains a number of faces, persons' faces broken down into categories, those being the shape of the face and other facial characteristics, the eyes, eyebrows, cheeks, chin, ears,

and things of that sort, hair.

Q. Are there 25 categories in there, to your recollection?

A. I believe, yes.

Raymond Rozycki - Direct

Q. And approximately, what, 16 different photos per category?

A. That's correct. It varies.

Q. And how do you utilize that with a witness?

A. The witness is instructed to look through the catalogue, first emphasizing the overall head shape and pick out photographs -- and look at photographs and pick out characteristics that closely resemble their recollection of the person that they saw.

Q. And approximately how long does this process take on the average, per witness?

A. It varies on their -- how deliberate they are and how well they remember the face. It can take half an hour to an hour.

Q. Okay. On this particular occasion, did you draw one sketch of one individual or two sketches of two individuals with Mr. Kessinger?

A. Two sketches of two individuals.

Q. Okay. And how long did that take?

A. Again, between five and six hours, I think.

Q. I'm going to show you what's in evidence as Defense Exhibit 1699. Is that one of the sketches you drew, Mr. Rozycki?

A. Yes, sir, it is.

Q. Okay. You put your initials on it anywhere, or can you just recognize it as one that you drew?

A. Often or -- often I put my initials on it, and I can recognize this as one I drew.

Raymond Rozycki - Direct

Q. Okay. And I'm also going to show you what's in evidence as Defense 1731. Is this the second sketch you drew after your interview with Mr. Kessinger?

A. Yes, it is.

Q. Okay. Now, after your interview with Mr. Kessinger, did you have a meeting and interview with any other witnesses present there at Fort Riley there that evening?

A. Yes, I did.

Q. Who did you meet with first after Mr. Kessinger?

A. Mr. Elliott.

Q. Did you show one or both of the sketches to Mr. Elliott?

A. I showed one of the sketches to Mr. Elliott.

Q. Which one, do you recall?

A. Our designation of Un. Sub. No. 1.

Q. And did Mr. Elliott indicate to you that he could add or delete anything from the sketch?

A. No, he couldn't. He could not add or delete anything from the sketch.

Q. What were his words, if you recall, how he described that?

A. That, I can't recall exactly. His recollection was very scant about the individual

SCENE ABOUT THE INDIVIDUAL.

Q. And as to Vicki Beemer, did you meet with her?

A. Yes, I did.

Q. And did you show her one or two of the sketches?

A. One of the sketches. The Un. Sub. No. 1, again.

Raymond Rozycki - Direct

Q. And did she say she could add or delete anything from the sketch?

A. Nothing from the sketch. Her information was more about a remark that the individual made. That was mostly her recollection of that.

Q. Okay. Do you recall what the remark was?

A. It was about -- related to his birthday. It was in that time frame.

Q. Did she tell you that the sketch was not accurate in any way?

A. No, sir.

Q. Now, after you do the sketches -- excuse me. Were there any other witnesses that it was shown to there that night in your presence?

A. No, sir.

Q. After you do the sketches, what happens to them?

A. Copies are made and given to the agents, and at that point it goes out of my hands.

Q. Okay. Your purpose was solely to draw the sketch?

A. Correct.

Q. Did you take part in distributing the sketch --

A. No, sir.

Q. -- to potential witnesses?

A. No, sir.

Q. Did you take part in releasing it on national TV?

Raymond Rozycki - Direct

A. No, sir.

Q. Did you see your sketches on national TV the next day?

A. No. No.

Q. You don't watch TV?

A. Well, not at that point. I was traveling between there and Oklahoma City.

Q. When was the first time you saw your sketches on TV?

A. On TV . . . I'm not -- I didn't watch much TV in Oklahoma City. I really don't know. It was after -- well after the fact.

Q. Did you, or did you not see your sketches on TV?

A. I don't recall.

Q. Okay.

A. Know that I saw them in newspapers, but I can't recall on TV.

Q. Okay. At any rate, to your knowledge, they were distributed nationwide; is that correct?

A. Correct.

Q. Now, you said you went to Oklahoma City?

A. That's correct.

Q. Did you do anything in connection with these witnesses in Junction City down in Oklahoma City?

A. No, sir.

MR. WOODS: Thank you, Mr. Rozycki.

We pass the witness, your Honor.

THE COURT: All right. Mr. Mackey.

CROSS-EXAMINATION

BY MR. MACKEY:

Q. Mr. Rozycki, the first time that you met Tom Kessinger, Eldon Elliott, and Vicki Beemer was in the early morning hours of Thursday, April 20, 1995; is that right?

A. That's correct.

Q. When's the last time you've seen those three individuals?

A. In the jury room.

Q. In the witness room?

THE COURT: Not the jury room.

THE WITNESS: I'm sorry. The witness room, excuse me.

BY MR. MACKEY:

Q. So you've been waiting with Mr. Kessinger and Mr. Elliott and Miss Beemer the last couple days?

A. Yes, I have.

Q. As a forensic artist, it doesn't fall to you, I take it, Mr. Rozycki, to routinely interview fact witnesses to develop information about what a person might know or recall about an event; is that correct?

A. That's correct.

Q. That falls to the special agents at the FBI; is that correct?

A. That's correct.

Q. And that division of skill was in your mind when you

Raymond Rozycki - Cross

arrived early that morning and talked to Agent Crabtree and Agent Smith; is that correct?

A. Yes, sir.

Q. And you relied entirely on their assessment of who had the best opportunity to observe and therefore who might have the most information to relay to you; correct?

A. That's correct.

Q. And the assessment that Agent Crabtree provided to you was of those three individuals, you should speak first to Tom Kessinger; correct?

A. Yes.

Q. His assessment was that Mr. Kessinger had the best vantage point; right?

A. Correct, yes.

Q. And that he had the best recall -- detailed recall of what he had seen on Monday, April 17th?

A. That's correct.

Q. You produced, based on your interview with Mr. Kessinger and only Mr. Kessinger, the exhibits that have been shown to you here, those two composites; is that correct?

A. Yes, sir.

Q. You showed to Mr. Elliott and Miss Beemer the composite of John Doe No. 1; correct?

A. Yes.

Q. You did not show the composite of John Doe 2 to either

Raymond Rozycki - Cross

Mr. Elliott or Miss Beemer, did you?

A. That's correct.

Q. Why didn't you do that?

A. Their recall of that individual was nonexistent, virtually nonexistent. And Mr. Elliott was not present when that person was there.

Q. Your understanding that neither Mr. Elliott or Miss Beemer had even the slightest amount of information sufficient for you as a forensic artist to display your work product and say, "Can you add or delete?"

A. That's correct.

Q. So you didn't even bother to show them Un. Sub. No. 2?

A. Again, right.

Q. And when shown Un. Sub. No. 1, they offered absolutely no other details; is that correct?

A. That's correct.

MR. MACKEY: I have nothing else.

MR. WOODS: Just short.

THE COURT: Yes, all right.

REDIRECT EXAMINATION

BY MR. WOODS:

Q. Mr. Rozycki, you just mentioned that Mr. Elliott was never present when John Doe 2 was present?

A. The space in time that we were talking about where there were two people in question, which is the time when

Raymond Rozycki - Redirect

Mr. Kessinger and Miss Vicki Beemer were in the room together with these two individuals, Mr. Elliott was not present.

Q. Okay. And you say that Mr. Elliott's recollection of John Doe No. 1 was vague?

A. Correct, yes.

Q. Did you learn that he had had two separate meetings and two conversations with John Doe No. 1?

A. No, sir.

MR. WOODS: Okay. Thanks, Agent Rozycki.

No further questions, your Honor.

MR. MACKEY: Nothing.

THE COURT: Is he excused?

MR. WOODS: Yes, sir.

THE COURT: Agreed, Mr. Mackey?

MR. MACKEY: Yes, sir.

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

Next, please.

MR. WOODS: Yes, your Honor. Jeff Davis.

THE COURTROOM DEPUTY: Raise your right hand, please.

THE COURTROOM DEPUTY: Raise your right hand, please.
(John Davis affirmed.)

THE COURTROOM DEPUTY: Would you have a seat, please.
Would you state your full name for the record and
spell your last name.

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

THE COURTROOM DEPUTY: Thank you.

John Davis - Direct
DIRECT EXAMINATION

BY MR. WOODS:

Q. Good morning, Mr. Davis.

A. Good morning.

Q. Will you tell the jury where you live.

A. I live in Junction City, Kansas.

Q. How long have you lived there?

A. Since 1976.

Q. What's your occupation?

A. I am an alarms monitor and a 911 operator on Fort Riley.

Q. And working for who?

A. Service Care of America, out of Atlanta.

Q. And is that under any portion of Fort Riley, the Army?

A. It's a government contract.

Q. You work with the provost marshal?

A. Correct.

Q. How long have you been doing that, sir?

A. Since '94. November.

Q. During 1995, how were you employed?

A. I was working there part-time at the provost marshal's
office, and I was also employed at Hunam Palace Chinese
restaurant in Junction City.

Q. Okay. I want to call your attention to April of 1995,
short time before and after the bombing in Oklahoma City, which
was on April the 19th. Do you recall that time period?

John Davis - Direct

A. Yes.

Q. And I specifically want to call your attention to April the
15th, the Saturday before the bombing. Did you work that day
for Hunam Palace?

A. Yes, sir, I did.

Q. Do you recall what time of day that you went to work for
them?

A. I got into the restaurant around 5:30.

Q. What type of duties did you have at the Hunam Palace?

A. I was delivery personnel. We answered the phone and also
do miscellaneous cleanup.

Q. How long had you worked there as of April, 1995?

A. In April of '95, I'd been there approximately four years.

Q. How many owners had been there during your four-year
period?

A. That was the third set of the owners.

Q. Changed hands three times?

A. Yes.

Q. Was it one of the few Chinese restaurant delivery restaurants in Junction City?

A. Yes.

Q. Was it the only one?

A. I believe it was at the time, yes.

Q. How did you -- how did the business obtain call-in orders? Did you put pamphlets out in motels and businesses?

John Davis - Direct

A. Yes, we occasionally, if business got slow, went out and blanketed most of the hotels in the area with our menus.

Q. Okay. Were there ads, also, in the Yellow Pages?

A. Yes.

Q. Based on your experience there, the number of years, can you give an estimation of what portion of the business came from motels and what portion of the business came from the Fort Riley or just private homes?

A. Fort Riley probably accounted for roughly 60 percent -- 60 to 70 percent of our take-out, the hotel would probably account for about 10, and then private in Junction would account for the rest.

Q. Okay. Now, did there come a time on the evening of April the 15th that you made a trip to the Dreamland hotel?

A. Yes, sir. It was the second delivery of the evening.

Q. And again, what time did you start work?

A. I got in around 5:30.

Q. And were there orders at that time ready for you to deliver?

A. Yes, sir.

Q. How many?

A. There were two orders waiting when I got there.

Q. Okay. Do you recall what the second order was?

A. Not offhand, no.

Q. Was it nearby, or was it --

John Davis - Direct

A. It was up the street, to one of the trailer courts on Grand Avenue.

Q. And what delivery did you decide to make first?

A. I went up the street to the trailer court first.

Q. Now, what -- let me show you --

MR. WOODS: May I approach the witness, your Honor?

THE COURT: Yes.

BY MR. WOODS:

Q. I'm going to show you what's been marked as D1739. And do you recognize that item, sir?

A. Yes. It's our form for delivery orders.

MR. WOODS: All right. We would offer into evidence D1739, your Honor.

MR. MACKEY: No objection.

THE COURT: Received, D1739.

BY MR. WOODS:

Q. Is this the form that's attached to the food that you're to deliver?

A. Yes, it is.

Q. And what type of information is compiled on the form?

A. It's the contents of the order, the last name, the address, and the phone number.

Q. Okay. What name was on that order?

A. Kling.

MR. WOODS: Your Honor, may I publish this?

John Davis - Direct

THE COURT: Yes.

BY MR. WOODS:

Q. Now, this is the form that was attached to the food, and I take it you go somewhere to pick up the food and the form within the restaurant; is that correct?

A. Yes. We take the order over the phone, fill out the form, put it into the window by the kitchen. They cook it, and then it comes out and we pack it up in a bag, staple the ticket to the bag, and deliver it.

Q. Okay. When you say "we take the order over the phone," did you take this order over the phone, Mr. Davis?

A. No, I did not.

Q. And when you got to work, is it your testimony this was ready for you to deliver?

A. Correct.

Q. Now, how can you tell this is the Dreamland?

A. It's written under the -- on the address line, Dreamland, Room 25.

Q. All right. And the name "Kling" is the customer?

A. Correct.

Q. And what are the numbers here, the "8-1108"?

A. That would be the phone number.

Q. Do you know what the prefix is there?

A. The "8" is 238. We just use the last number of the first three.

John Davis - Direct

Q. Is that the prefix for all of Junction City or something?

A. It's 238, 762. There's various.

Q. Now, the log number, 23, what does that mean?

A. We also kept a daily log of all orders to keep track of who delivered the orders. It's numbered so that -- at the end of the night, when we check out, that's what our commission is based on.

Q. All right. And what type of commission did you get -- how are you paid for your work there at the Hunam Palace?

A. I was receiving 4.50 an hour and 7 percent of whatever we took out in food. After tax.

MR. WOODS: Your Honor, may I approach?

THE COURT: Yes.

BY MR. WOODS:

Q. I'm going to show you what's marked for identification purposes as 1738, D1738. Do you recognize that item, sir?

A. Yes, it's a copy of our daily log.

Q. And is it a daily log for any particular day?

A. Not written on it, no.

Q. How -- how do you tell what day it is if you all don't keep a date on there?

A. Our -- the owner of the restaurant at the end of the night, when we closed up, would take all the tickets from the orders, wrap them in the log, and then put a rubber band around it and write the date on the outside.

John Davis - Direct

Q. Okay. And this order for Kling at the Dreamland shows it's Log No. 23?

A. Correct.

Q. And on the item in front of you, is there a 23?

A. Yes, there is.

Q. And you recognize that entry?

A. Yes. It's to the Dreamland Motel.

Q. Wait. Before you read into the record --

MR. WOODS: We would offer that item into evidence, your Honor.

MR. MACKEY: No objection.

THE COURT: D1738 will be received.

BY MR. WOODS:

Q. What does Item 23 on your log reflect?

A. It's an order to the Dreamland Motel that came in at 5:00 for \$9.65.

Q. Does it reflect who the delivery person was?

A. Yes. It's myself.

Q. So there are two records, then, kept showing the order and the delivery?

A. Correct.

Q. Approximately what time did you get to the Dreamland?

A. I would guess around 5:45.

Q. What route did you have to take from the Hunam Palace to get there?

John Davis - Direct

A. Well, I ran up the street, which is about three blocks, to the trailer park; left the trailer park, went through Fort Riley, out to Grandview Plaza, to the Dreamland.

Q. Is this an alternate route that you would have normally taken?

A. Yeah. There was -- there is a bridge that is situated that would have blocked access if it had been out, which it was.

Q. And had you been to the Dreamland before, sir?

A. Yes.

Q. Approximately how many times in your four years of

Q. Approximately how many times in your four years of delivery?

A. Oh, 50 or more.

Q. Do you go there -- what frequency is that? Can you give us an idea of how frequent you go to the Dreamland?

A. It would vary from season to season. During the summer months, they've got a lot of seasonal jobs around; and that was one of the motels that a lot of the seasonal workers would stay at. So it would be more frequent during the summer. One, maybe two a week.

Q. Was it your experience that construction workers stayed at the Dreamland?

A. Construction workers, roofing crews.

Q. Okay. And you often received orders from those?

A. Yes.

Q. Were those located on any particular wing of the motel?

John Davis - Direct

A. Yes. It would -- the office is situated in the center. The building's in an L shape. Most of the long-term people that were there stayed over to the right of the office.

Q. On the east wing?

A. Correct.

Q. And did you know where Room 25 was when you were making your delivery?

A. Not right offhand, no.

Q. When you drove up, what did you see?

A. I pulled into the parking lot, and there was a gentleman standing in the doorway of the first door to the left of the office.

Q. And did you look at the door number to see if that was Room 25?

A. No. The door was already open.

Q. Did you look at any other doors to see that you were on the right side of the motel to find Room 25?

A. Yes.

Q. And was it your determination that you were in the right area?

A. Yes, it was.

Q. Where did you park?

A. I parked very close to directly in front of the open door.

Q. Was there another car right in front of the open door, to your recollection?

John Davis - Direct

A. Not that I can recall, no.

Q. And what happened after you parked?

A. I got out of the car with the bag of food, removed the ticket from the bag, and approached the gentleman in the doorway.

Q. Did you have a conversation with the gentleman?

A. A short one. His food was fairly late at that point. He asked if I had had a problem getting out there due to the

bridge being out. And I told him that no, I'd just gotten to work late and we were running a little behind.

Q. Was he angry or upset that his food was late?

A. No, he didn't appear to be.

Q. Was there any other conversation that you had with him?

A. We discussed the fact that it was fairly nice out that day; it had been rather dreary and rainy the week prior.

Q. Okay. And how was the individual dressed, if you recall?

A. Casually. I mean, he wasn't dressed in sweats and a T-shirt and looking scraggly and bummed out; but he was just casual dress: jeans, T-shirt type.

Q. Was he wearing a military uniform or camouflage --

A. No.

Q. -- fatigues or anything?

A. No, sir.

Q. Okay. And where was he standing during this period that you had a conversation with him?

John Davis - Direct

A. He was standing in the doorway.

Q. How close did you get to him?

A. Oh, close enough to hand him the food at arm's reach. 3 feet.

Q. How long did you stay there in conversation with him?

A. 2 to 3 minutes.

Q. Did he pay you for the items?

A. Yes.

Q. And how did he pay you?

A. With cash.

Q. Where did he obtain the cash from?

A. I believe he pulled it out of one of his front pockets.

Q. And the order was for 9.65?

A. Yes.

Q. How much did he give you?

A. \$11.

Q. Okay. So a tip of \$1.35?

A. Correct.

Q. What did you do at that time? Any further conversation at all with the individual?

A. Not that I can recall, no.

Q. Did you ask him if he was Mr. Kling when you walked up to him?

A. No, sir.

Q. Is it -- I take it from your testimony you had decided that

John Davis - Direct

that was Room 25, by looking at the numbers on the --

A. Yes.

Q. So was there any question in your mind that you were going to the right place?

A. No. Not at all.

Q. Did he indicate that he was waiting on the food?

A. I assumed that when I pulled up.
Q. Did the individual go into the room and shut the door before you left?
A. I don't recall.
Q. What did you do after you gave the food to him, got the money? What did you next do?
A. I got back in my car, returned to the restaurant.
Q. So your total time with the individual was approximately how long?
A. 2 to 3 minutes.
Q. Now, were you contacted by the FBI two days after the bombing? The bombing occurred on April the 19th.
A. Yes.
Q. Where were you when you were contacted?
A. I was at work at the restaurant.
Q. And who was it that contacted you, if you recall?
A. I believe it was Gary Burgess from the Junction City -- or the Geary County Sheriff's Office and an FBI agent.
Q. Did you know Mr. Burgess?

John Davis - Direct

A. Not personally, no.
Q. Did you know who he was, being a local office?
A. Yes, a local office.
Q. How big is Junction City, by the way?
A. Approximately 25,000.
Q. Most people know each other?
A. Well, there's smaller groupings; but, yeah, I mean it's a small town.
Q. Had you done business at the Dreamland and at the McDonald's and Eldon Elliott's? You know where those places are?
A. Yes.
Q. Firestone store?
A. Yes.
Q. Okay. On Friday, April 21, did -- what happened at that time when the FBI questioned you? Were the records available of the delivery?
A. I don't know that they were at that time.
Q. And were the records available shortly thereafter?
A. Yes.
Q. Were you able to determine based on the log that's in front of you and this order form, the Kling order, that you were the delivery person?
A. Correct.
Q. Were you able to determine that on Friday when they first

John Davis - Direct

approached you, April 21?
A. I believe we went and went through a process of elimination with the other drivers.
Q. How many drivers work there?
A. I'm not sure how many are currently employed there. There

A. I'm not sure how many are currently employed there. There were two or three of us at that point.

Q. Okay. And did they show you some sketches at that time?

A. Yes.

Q. How many?

A. Two.

Q. And were you able to identify anybody at that time?

A. No, sir.

Q. All right. Did you have a subsequent meeting with the FBI where they showed you a photo lineup with individuals?

A. Yes.

Q. Okay. And were you able to identify anybody in that photo lineup?

A. No, sir.

Q. By the time that they showed you the photo lineup -- which was the following week; is that correct?

A. Correct.

Q. Do you remember what day it was?

A. Not offhand, no.

Q. Had you seen a photo of Mr. McVeigh in the newspaper?

A. I believe I had by that point, yes.

John Davis - Direct

Q. Did you tell the agents anything about having viewed that photograph in the newspaper?

A. I believe so, yes.

Q. What did you tell them?

A. I believe that I said that I had -- that Sunday, the morning paper that Sunday had run a picture of Mr. McVeigh from the shoulders up -- I believe.

Q. And what did you tell the agents concerning the photo lineup they were showing you?

A. That none of the pictures that I was shown was the person I'd delivered to.

Q. What did you tell the agents concerning the description of the individual as it compared to the photograph in the newspaper of Mr. McVeigh?

A. That there were several things that didn't fall in line and made me believe that it was not Mr. McVeigh that I delivered to.

Q. All right. The individual that you saw and talked with -- how long, two to three minutes?

A. Correct.

Q. What was his hair color, if you recall?

A. It was a very dark blond, light brown.

Q. Was it short, in a burr haircut?

A. No, it was not.

Q. Was it -- can you give the jury an idea of what length of

John Davis - Direct

the hair it was and how it was combed or styled?

A. It wasn't styled. It was fairly -- it looked like he'd been kind of just lounging around in his room. And the length,

2 inches on top, above the collar in back.

Q. Style was not a good word to use. How was the hair? Was it combed, or unkempt, tousled, or what?

A. I would -- I would go with unkempt and tousled.

Q. And was that different than what you saw in the newspaper photo of Mr. McVeigh?

A. Yes.

Q. What about any facial characteristics of Mr. McVeigh -- excuse me -- of the person that you saw at the room that night that was different from the photo that you saw of Mr. McVeigh, just the facial characteristics?

A. The nose was not the same. The ears.

Q. What was different about the nose?

A. Mr. McVeigh has a rather prominent nose, and his ears stick out from his head, as opposed to laying flat up against his skull.

Q. And the individual you saw at the motel -- what was different about his nose and his ears?

A. His nose was not a prominent feature of his face, and his ears didn't appear to me to be larger than average.

Q. Okay. Anything about his mouth?

A. Not specifically.

John Davis - Direct

Q. Anything about the width of the face?

A. He had a fairly slender face with what a -- what I would term a severe jaw line, squared off.

Q. Let me clarify the record here. When we say "he," I'm talking about the person at the room.

A. Yes; correct.

Q. The person at the room that you saw had a slim face?

A. Yes.

Q. And you saw the photograph of Mr. McVeigh?

A. Correct.

Q. And he has a slim face?

A. Yeah, rather slim.

Q. Were they both similar in their slimness?

A. Yeah. I . . . that's not how I judge who I deliver to.

Q. Okay.

A. I took the face as a whole, and it did not match up with the pictures I was shown.

Q. Okay. And you saw this picture on Sunday, the, what, 23d of April?

A. I would assume so, yes.

Q. And you had seen the individual at the room on the 15th, eight days before?

A. Yes.

Q. So is it accurate to say that your memory was fairly fresh at that time?

John Davis - Direct

A. Yes.

Q. Was there anything about that delivery that evening that stood out in your mind, about going to the Dreamland and the bridge being out?

A. Well, I had had a -- not so much an argument but a discussion with my boss as to which way I needed to go, because she had been out there previous on the way into town and said that the bridge was out, and I had been out there the night before, out to Grandview, and I do not remember it being out the night before. And the delivery was to the opposite side of the office from most of our business out there.

Q. And those are factors that cause you to remember the event?

A. Yes.

Q. Now, did you tell the agents there when they showed you the photo lineup that you could not identify the individuals in there?

A. Correct.

Q. And did you tell them about the difference in the description of what you recognized at the room?

A. I believe I did.

Q. Okay. Now, have you had a lot of meetings with the Government since that time, Mr. Davis?

A. Yes.

Q. Can you give the jury an idea of how many meetings you've had with the Government?

John Davis - Direct

A. A dozen or more.

Q. How many?

A. A dozen or more.

Q. And where have they taken place?

A. In various locations. Been out here once to talk with them. Several meetings in Junction City at my apartment. I met with them on occasion down at the police department, also.

Q. Okay. And this is over what period of time?

A. Initially -- the initial month following the delivery and the bombing, probably, oh, once every other day, like the first week. And then it slowly dropped off.

Q. Did it pick up again at some point in time?

A. Yes.

Q. All right. When was that?

A. The grand jury empaneled down in Oklahoma City. And also the -- shortly after ABC ran the composite that I worked on with Miss Boylan.

Q. And when was that? Do you recall?

A. Not offhand.

Q. All right. How many times have you come to Denver here to meet with the FBI and the prosecutors?

A. Once.

Q. When was that?

A. Would have been in September of '96, I believe.

Q. And did you meet with them in '97?

John Davis - Direct

A. Not -- no. That I can recall.

Q. Okay. What's been the tenor of those meetings? How would you characterize the meetings?

MR. MACKEY: Objection.

THE COURT: Sustained.

MR. WOODS: Okay. Thank you, Mr. Davis.

I have no further questions, your Honor.

THE COURT: Mr. Mackey.

CROSS-EXAMINATION

BY MR. MACKEY:

Q. Good morning, Mr. Davis. How are you?

A. Good morning.

Q. You've testified before, have you not, about this subject matter?

A. Yes.

Q. And before coming to court today, have you reviewed a transcript of your testimony?

A. Yes.

Q. Did you study it carefully?

A. I looked over it this morning.

Q. How many different times have you read that transcript?

A. Three, maybe four.

Q. Mr. Davis, did you find any misstatements on your part in that transcript?

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

John Davis - Cross

Q. Every word that you said before, you stand by today?

A. Yes.

Q. Mr. Davis, on Saturday, April 15, it fell to you to make a delivery to Room 25 at the Dreamland Motel; is that correct?

A. Correct.

Q. And you've shown the jury an order form from your business, and the customer's name was Kling; is that right?

A. Correct.

Q. No first name?

A. No.

Q. Correct? Kling, Room 25?

A. Yes.

Q. At the Dreamland Motel; correct?

A. Correct.

Q. Mr. Davis, you don't quarrel with evidence that there were two phone calls to the Hunam Palace that same day, do you?

A. I'm not aware of how -- of how many phone calls we had, no.

Q. Do you remember whether Mrs. Bai or anyone else at the Hunam urged you, since you arrived a little bit late, to get on with the job because one customer was already complaining?

A. I don't recall whether or not they'd already called in and complained or not, no.

Q. In any event, you grabbed two bags and you headed out the door on Saturday, April 15th; correct?

A. Correct.

John Davis - Cross

Q. You made the short stop first?

A. Yes.

Q. And then took the long drive through Fort Riley to Room 25 of the Dreamland; correct?

A. Yes.

Q. At that point in time, Mr. Davis, did you have any idea who the registered guest was in Room 25?

A. No, sir.

Q. Have you since April 15, 1995, seen a registration card for that room?

A. No, sir.

Q. Do you remember seeing, reading in the Junction City paper, where a copy of the registration card for Room 25 was printed?

A. I may have.

Q. Do you remember that the name of the guest registered to Room 25 was Tim McVeigh?

A. Yes, I believe so.

Q. And the delivery you made, you have no absolutely no doubt was to Room 25; correct?

A. Correct.

Q. Not next door, not the east wing, but definitely Room 25?

A. Yes.

Q. Mr. Davis, let me hand you at this time what's been admitted into evidence as defendant Exhibit 1709. Do you see that in front of you?

John Davis - Cross

A. Yes.

Q. It's been previously identified as a reservation form at the Elliott's Body Shop bearing the signature of Robert D. Kling. Do you see that signature?

A. Yes, sir.

Q. And the date of that reservation form is Saturday, April 15, is it not?

A. Yes.

Q. It's been also agreed, Mr. Davis, that it was Tim McVeigh who signed the name "Robert Kling" on that form. All right. With that representation, Mr. Davis, let me ask you: When you delivered the bag to your customer in Room 25 on Saturday, did you ask him to sign anything?

A. No, I did not.

Q. On that moment, as you drove off of -- after this delivery, there was nothing special about that delivery that would give you any reason at that time to collect and store and retain all the details about that 2-minute encounter; correct?

A. No.

Q. It was one of many deliveries that you've made over time?

A. Yes.

Q. In fact, you were -- you made some 15 more deliveries that same night; correct?

A. Correct.

Q. And over the years at the Dreamland Motel, you have made

John Davis - Cross

literally hundreds and hundreds and hundreds of deliveries; correct?

A. Not to the Dreamland, no.

Q. I'm sorry?

A. Not hundreds.

Q. Around Junction City?

A. Yes.

Q. And there's something common about those deliveries, is there not, Mr. Davis? They're momentary; correct?

A. Correct.

Q. Very short duration?

A. Most of the time, yes.

Q. And virtually all of the customers are different?

A. With the exception of a few regulars, yes.

Q. Because so much of your business goes to Fort Riley and so much at Fort Riley turns over its staff, you don't see many same faces time after time, do you?

A. No, not often.

Q. And it is your testimony that this particular person inside of Room 25 on Saturday was a person you had never seen before and have never seen since?

A. Correct.

Q. Well, let's turn our attention now, Mr. Davis, to Friday, April 21, two days after the bombing in Oklahoma City.

A. Right.

John Davis - Cross

Q. And about six days after this delivery to Room 25.

A. Yes.

Q. Are we focused?

A. Sure.

Q. You show up at work on Friday evening, do you not?

A. Yes.

Q. And shortly after arriving, there's a couple of police officers, FBI agents, and local officials who are asking questions of the delivery men at the Hunam; correct?

A. Correct.

Q. And they go about their business, and they eventually get to you because they're looking to find who it was that made the delivery to the Dreamland Motel on Saturday; correct?

A. Correct.

Q. Now, at the start of that interview, Mr. Davis, you understood they were there as part of an investigation of a massive bombing that had taken place two days before in Oklahoma City?

A. Yes.

Q. You understood that's what they were there to do, to ask questions that might help in that investigation; correct?

A. Correct.

Q. There was nothing about that interview, Mr. Davis, that

would prohibit or inhibit or restrain you in any fashion from cooperating fully with law enforcement when they asked you

John Davis - Cross

about what you knew of that delivery; correct?

A. Correct.

Q. You, of course, would want to cooperate fully, given the nature of the crime and the assignment they had; correct?

A. Yes.

Q. Now, before you started talking to the police officers that afternoon, Mr. Davis, had you seen any news accounts in the Junction City paper about individuals in Junction City somehow connected to the bombing?

A. I can't say either way; that I did or did not.

Q. Let me hand you at this time what's been marked for identification as Government Exhibit 2125. Take a look at that, please.

And can you tell from the cover page that that's a portion of the newspaper, from the Daily Union in Junction City, for this same day, Friday, April 21, 1995?

A. Yes.

Q. Could you flip through it just a moment.

A. Sure.

MR. WOODS: Thank you.

BY MR. MACKEY:

Q. Mr. Davis, do you see in Government Exhibit 2125 two composite sketches that were part of that newspaper article on Friday, April 21, 1995, in Junction City?

A. Yes.

John Davis - Cross

Q. Do you remember -- can you tell this jury whether you had seen those composites before the time that you talked to the FBI and the police officers?

A. I believe they were aired on television, and I'm sure I would have seen them then.

Q. To what degree of certainty, Mr. Davis, is it that you recall having seen the composites before you talked to the police?

A. I couldn't say.

Q. But this was, was it not, Mr. Davis, the very first time that anybody had asked you to freeze your mind and replay in as much detail as possible what you had seen and observed and could recall from this delivery; correct?

A. Correct.

Q. And the officers made clear that any and all information you might have and could remember, they wanted to learn from you?

A. Correct.

Q. Asked open-ended questions: Tell us everything, all details that you possibly can remember about that delivery; correct?

CORRECT:

A. Yes.

Q. And at that time, of course, they asked you: Did you make the delivery? And you told them yes?

A. Correct.

John Davis - Cross

Q. And then they said, Mr. Davis, describe the customer that you handed the bag to; correct?

A. Correct.

Q. And at that time, Mr. Davis, knowing the import of this interview, you told them it was definitely a white male?

A. Correct.

Q. It was not Hispanic?

A. Correct.

Q. It was not any other race. It was definitely a white male; correct?

A. Yes.

Q. You told them that this individual was 28 to 29 years of age; correct?

A. Late 20s, early 30s, yes.

Q. 28 or 29 years of age?

A. Yeah.

Q. Were you that specific on --

A. I don't know if I was that specific or not.

Q. Mr. Davis, take a -- open the book, please; and you should find a tab for an interview marked April 21, 1995. Do you see that?

A. Yes.

Q. In the first page of the interview. Look down to the next-to-last paragraph in that same interview. You see that?

A. Yes.

John Davis - Cross

Q. All right. Take a moment and just read it to yourself, please.

Have you read it?

A. Yes.

Q. Having read it, Mr. Davis, do you recall telling the police officers on that evening that this individual, this customer, was 28 or 29 years of age?

A. I have no specific memory of that now, but that's what it says.

Q. Do you have any reason, Mr. Davis, to doubt the content or the accuracy of this descriptive information written up by the officers that evening?

A. No.

Q. You also told the officers that this individual was approximately 6-foot-tall?

A. Yes.

Q. And you told them his weight was approximately 180?

A. Correct.

Q. You described his hair as short and sandy?

- A. Yes.
Q. And that he had a clean-cut manner?
A. Yes.
Q. Clean-cut look?
A. Yes.
Q. And you were certain that he had no mustache?

John Davis - Cross

- A. Correct.
Q. And that was everything that you could provide in the way of details to those officers six days after the delivery and two days after the bombing; correct?
A. Correct.
Q. You did not at that time, Mr. Davis, begin to describe size of ears; correct?
A. No.
Q. Shape of a nose?
A. No.
Q. Color of the eyes?
A. No.
Q. The facial features in any form or fashion; correct?
A. Correct.
Q. Because at that time you couldn't recall any; isn't that true?
A. Correct.
Q. You have in fact consistently admitted, Mr. Davis, that what stuck out in your mind about this customer were three things: his height --
A. Yes.
Q. -- his weight, and his build?
A. Yes.
Q. And you have felt secure in your memory that he was slightly taller than you; correct?

John Davis - Cross

- A. Correct.
Q. You have felt secure in your memory that he was around 180?
A. Yes.
Q. And you have felt secure in your memory that this was a man of slender build?
A. Yes.
Q. And then in every other respect about physical characteristic, Mr. Davis, the scale drops off, does it not?
A. Yes.
Q. And when it comes to the face, Mr. Davis, on that day and any other day, you have, do you not, very little specific recall of the customer's facial features?
A. Correct.
Q. On that same day, at the Hunam Palace, the police officers showed you two diagrams, did they not?
A. Yes.

Q. Two composites.

And I'll show you at this time what's been admitted as Government -- excuse me -- Defendant's 1731.

MR. MACKEY: I can use the ELMO, your Honor.

THE COURT: All right.

BY MR. MACKEY:

Q. Mr. Davis, you recall the police officer showing you this sketch?

A. Yes.

John Davis - Cross

Q. You took your time and studied it, I hope.

A. Yes.

Q. You looked at what's on that piece of paper and compared it to your memory of the person you had encountered in Room 25, did you not?

A. Correct.

Q. You knew how important it was to be precise and accurate about your statements, did you not?

A. Yes.

Q. And at that time you told the police officers, "If this person had a slightly thinner face, it might be somebody I know; but I don't know where from." Correct?

A. Correct.

Q. They showed you, did they not, Mr. Davis, what I'm displaying as Defendant's 1699?

A. Yes, they did.

Q. Correct? Same first time you'd been asked any questions about this delivery; correct?

A. Yes.

Q. And in similar fashion, you studied this carefully, did you not?

A. Yes.

Q. Knew how important it was that the law enforcement officers get as much accurate information as possible as part of this investigation; correct?

John Davis - Cross

A. Correct.

Q. You studied it, compared it to your memory of this customer you had seen, and you told the police officers, "It's nobody I know."

A. Correct.

Q. Then you went on to say, did you not, Mr. Davis, that "I make so many deliveries, I cannot recall faces"?

A. Yes, I assume I did.

Q. Do you have any doubt that you made that statement when first asked about the identity and description of your customer when shown this composite?

A. Without opening this again, no.

Q. Mr. Davis, after the police officers left that Friday evening, could you tell the members of the jury who it was that you first spoke to about what you had seen and observed on

you first spoke to about what you had seen and observed on Saturday, April 15, in your delivery?

A. Outside of the restaurant? Who I spoke to first outside of the restaurant?

Q. Yes.

A. It would have been a media contact, and I can't even recall right now who it was.

Q. Could have been somebody from the Washington Post?

A. Yes. That was who it was.

Q. And would you tell the members of the jury when you first spoke to any representative of the Washington Post?

John Davis - Cross

A. I can't recall a specific date offhand.

Q. I'm going to show you at this time what I've marked as Government Exhibit 2128.

MR. WOODS: Thank you.

BY MR. MACKEY:

Q. You can tell from reviewing that exhibit, can you not, Mr. Davis, that that's a Washington Post article that appeared on April 24 -- Monday, April 24, 1995; correct?

A. Correct.

Q. And page through it, as I see you doing, to the end, and see if you can't find a quote that you gave to the Washington Post that was published on Monday, April 24.

A. Yes.

Q. Having reviewed that exhibit, Mr. Davis, can you tell the jury now when it was that you first spoke to a reporter from the Washington Post?

A. It would have been, I assume, that weekend.

Q. Talked to the police on Friday; you were in the paper on Monday; sometime in the course of the weekend, Saturday, Sunday, you spoke --

A. Correct.

Q. Who called who?

A. They called me.

Q. And how did they have your name?

A. I really don't know.

John Davis - Cross

Q. And at that time, Mr. Davis, they asked you some questions about much of what's been talked about here this morning?

A. Yes.

Q. "Who was this man that you delivered the Chinese food to"; correct?

A. Correct.

Q. And at that time, Mr. Davis, in a statement to a newspaper reporter, you said, "It wasn't Tim McVeigh"?

A. Correct.

Q. On Friday, you told the law enforcement officers, "I don't recall faces." And by the weekend, it's your testimony, Mr. Davis, you had ruled out Tim McVeigh as that customer?

A. Yes.

--- ----

Q. Mr. Davis, what happened in the weekend, April 22 and 23, that would move you from no recall to absolute certainty that it was not Tim McVeigh?

A. Thought. Going back over events my head.

Q. Realizing how important it would be to be accurate?

A. Yes.

Q. You wouldn't make an offhand comment to a newspaper reporter without having checked your mind and your memory about the details; correct?

A. Correct.

Q. Had you ever met Tim McVeigh before?

A. No, sir.

John Davis - Cross

Q. Well, how was it, Mr. Davis, that you could be so sure by the weekend that the customer you delivered to was not him?

A. Because from my recollection, it didn't look like Mr. McVeigh.

Q. Well, you've got to compare your memory to something, do you not, Mr. Davis, in order to say: Therefore, I know the man I delivered the bag to was not Tim McVeigh; correct?

A. Correct.

Q. And the only something you had over the weekend, was it not, Mr. Davis, was a portrait photo --

A. From shoulders up.

Q. -- of Tim McVeigh that you saw in a newspaper?

A. Correct.

Q. It wasn't a real, first-edition photograph, was it?

A. No.

Q. It wasn't a book-end photo that showed more of his build and manner?

A. Correct.

Q. It was nothing more than a newspaper printout of a portrait shot of Tim McVeigh; correct?

A. Correct.

Q. Nothing in that portrait shot of Tim McVeigh would tell you how tall he was?

A. Correct.

Q. Nothing in that shot would tell you how much he weighed?

John Davis - Cross

A. Correct.

Q. And nothing in that small portrait snapshot of Tim McVeigh would tell you, would it, anything about his build?

A. No.

Q. And yet on that basis and that basis only, Mr. Davis, you then made the statement to the Washington Post reporter: It ain't Tim McVeigh.

A. Correct.

Q. And the day after, the day after this Washington Post article appeared, the FBI came back to seek your assistance, did they not?

A. Yes, I believe so.

Q. You were a man who had delivered a product to Room 25, same room in which the person named Tim McVeigh was registered, and they wanted to ask you some more questions; correct?

A. Correct.

Q. They wanted to test your memory of this encounter with this person against several photographs of different individuals; correct?

A. Correct.

Q. And they told you, Mr. Davis: We want you to look at this photographic spread; you may or may not see the person who you delivered the bag in this spread. Correct?

A. Correct.

Q. They told you: Set aside what you may have seen or read in

John Davis - Cross

the newspaper, rely only on your memory, draw it up in your mind, compare it with what's on that photo spread; correct?

A. Correct.

Q. Gave you clear instructions to study the photographic spread and select, if you could, the person that you had delivered the bag to, correct?

A. Correct.

Q. Mr. Davis, when they showed you the photographic spread, you had already taken a public position, had you not, that it was not Tim McVeigh?

A. Yes.

Q. You expected, did you not, that Mr. McVeigh's photograph may well be among the several that were being shown to you on that day; correct?

A. Yes.

Q. And you knew before you began to look at those photographs that you were not going to select Tim McVeigh; isn't that true?

A. Maybe so. But it is also my recollection that I did look at those photographs.

Q. And you studied them?

A. Yes.

Q. But before you began looking at them, you had already ruled out Tim McVeigh as your customer, had you not?

A. Yes.

Q. Did you complain at any point in time, Mr. Davis, to

John Davis - Cross

anybody that you remember this meeting with the agents and the photographic spread because they had interrupted your plans to meet another reporter who wanted to talk to you about your story?

A. Yes.

Q. Who was that reporter?

A. I don't recall offhand.

Q. Do you remember, Mr. Davis, how many different reporters you've spoken to since the time that you made this delivery?

A. A dozen or more.
Q. Washington Post, we've already talked about.
A. Right.
Q. Dallas Morning News for sure?
A. Correct.
Q. Kansas City Star?
A. Sure.
Q. And a number of correspondents for television stations; correct?
A. Correct.
Q. One of those meetings with a television correspondent took place on the anniversary, the first anniversary, Mr. Davis, of the Oklahoma City bombing. Do you recall?
A. Yes.
Q. You recall there was a flood of publicity around the anniversary, news stories about the bombing?

John Davis - Cross

A. Yes.
Q. The developments in the investigation, progress of the case; correct?
A. Correct.
Q. And you were invited to be interviewed; correct?
A. Correct.
Q. But they didn't want to just hear your story, did they, Mr. Davis? They wanted you to sit down with a composite artist; correct?
A. Correct.
Q. And recall all the details about this person, so much so that a composite, a facial composite, could be drawn up; correct?
A. Correct.
Q. And you did that? You cooperated with them?
A. Yes.
Q. At any point in time before then, Mr. Davis, had you volunteered or told the FBI: I have now enough information in my mind about this person's facial features, I can help, I can sit down and work with your composite artist and come up with a sketch?
A. No.
Q. But when the television station called, you agreed, did you not, to meet with them?
A. Yes.

John Davis - Cross

Q. You left Junction City; correct?
A. Yes.
Q. Drove up all the way to Topeka?
A. Yes.
Q. And did you spend a weekend with those people?
A. No, I did not.
Q. How much time did you spend with the composite artists?
A. About four hours in the afternoon. and then we went to

A. About four hours in the afternoon, and then we went to Topeka; and I was back at work by 11 that evening.

Q. And the composite artist was a woman named Jeanne Boylan?

A. Correct.

Q. And you took your time going through your memory, did you not, with Miss Boylan about the details of this customer's face?

A. Yes.

Q. And spent many hours, as you described, coming up with your best description of the person, facial representation of the person, you had delivered that bag to; correct?

A. Correct.

Q. Let me show you Government Exhibit 1629.

Do you see that, Mr. Davis?

A. Yes.

Q. And is that composite the result of your meeting with Jeanne Boylan on or about the anniversary of the bombing?

A. Yes, it is.

John Davis - Cross

MR. MACKEY: Your Honor, I'd move to admit Government Exhibit 1629.

MR. WOODS: No objection, your Honor.

THE COURT: Received. You may publish it, if you wish.

MR. MACKEY: Thank you.

BY MR. MACKEY:

Q. Mr. Davis, this composite is the result of your work with Jeanne Boylan; is that correct?

A. Correct.

Q. Is that your testimony?

At any point in time, Mr. Davis, have you taken a good close look at your composite, Government Exhibit 1629, and compared it to the Un. Sub. 1 composite that was shown to you by the police officers on Friday, April 21?

A. I don't think I consciously have sat down with both of them in front of me, no.

Q. Would you do that now.

Mr. Davis, would you agree with me that there is virtually no similarity between your composite and the Un. Sub. 1 composite?

A. No.

Q. They are quite different, are they not?

A. Yes.

Q. Mr. Davis, I have just a couple final questions, if you

John Davis - Cross

don't mind.

You told the officers on Friday, April 21, that one thing you were sure of is that there was one man and one man only in Room 25; is that correct?

A. Correct.

Q. Have you ever, Mr. Davis, said to anybody that there was more than one person in that room?

A. No, sir.

Q. Mr. Davis, take a look at this dark-haired woman back here at the second table. Have you ever met her before?

A. Not to my knowledge, no.

Q. Do you remember in September of 1996, on an occasion that Mr. Woods asked you about, staying at the Burnsley Hotel?

A. Yes.

Q. Mr. Davis, do you remember meeting the bartender at the Burnsley Hotel?

A. Yes.

Q. Did you in that visit to Denver, Mr. Davis, tell the bartender you saw two people in Room 25?

A. No, sir, I did not.

Q. You deny that?

A. Yes, I do.

Q. Do you deny in equal fashion, Mr. Davis, having made the statement to Jeanne Boylan, the composite artist that you spent several hours with, in April of 1996, that Tim McVeigh, in

John Davis - Cross

addition to your composite person, was in Room 25?

A. Yes, I emphatically deny that.

MR. MACKEY: Thanks, Mr. Davis.

THE COURT: Mr. Woods.

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

REDIRECT EXAMINATION

BY MR. WOODS:

Q. Mr. Davis, follow-up on the question: I'm not quite sure what he was asking. The dark-haired lady: Was that the bartender at the Burnsley?

A. No. I do not believe so.

MR. MACKEY: I agree with that, your Honor.

BY MR. WOODS:

Q. I'm not sure what the connection was. But you've never met this lady, have you?

A. Not that I can recall, no.

Q. She's not met you?

A. Not that I'm aware of.

Q. You know whether or not she lives at the Burnsley?

A. No.

Q. Okay. Mr. Mackey asked you did you try to help the officers. Do you recall those questions?

A. Yes.

Q. And on Tuesday, you know -- you were interviewed on Friday, April 21. Then on Tuesday, the 25th, when they showed you the

John Davis - Redirect

photo lineup? Do you recall that date?

A. Yes.

Q. Okay. Did you think that you were trying to help the

officers when you told them that, "Look, my recollection is it's different than what the picture of McVeigh is in the paper"?

A. Yes.

Q. Have your interviews with the Government from that date been sort of the tenor that you've just went through with Mr. Mackey?

MR. MACKEY: Objection.

THE COURT: Overruled.

THE WITNESS: To some extent, yes, they have.

BY MR. WOODS:

Q. Has the Government -- have you met with these agents here at the table, Mr. Hersley and Mr. Tongate?

A. Yes.

Q. How many occasions?

A. Several occasions.

Q. Have they told you how important this case is?

A. Yes.

Q. Have they discussed your duty as a witness?

A. Yes.

Q. Have you been encouraged to change your testimony?

MR. MACKEY: Objection.

John Davis - Redirect

THE COURT: Overruled.

THE WITNESS: Not overtly, no.

BY MR. WOODS:

Q. What do you mean by "not overtly"?

A. The process of giving an oral description of the person I delivered the food to, the number of times that that has been gone back over, rapidly in succession, and to still be asked that same question consistently when my answer remains consistent to me feels like the response they receive is not the one they would like and that we'll go over this again and again and again.

Q. Okay. How many times have you gone over it with them?

A. I can't put a number on it.

Q. Pardon me?

A. I couldn't put a number on it.

Q. Is it over 20?

A. I'm sure.

Q. Now, Mr. Mackey asked you about the contacts with the press. Did you ever initiate contact with the press?

A. No.

Q. He showed you newspaper articles. Have you read newspaper articles about this case from the day it happened?

A. I can't say with certainty that I have from the day it occurred, no.

Q. Okay. Have you seen quotes from anonymous federal law

John Davis - Redirect

enforcement authorities giving details of the case?

A. I may or may have

A. I may, or may have.

Q. Have you seen that every witness the Government talks to then gets contacted by the press?

MR. MACKEY: Objection.

THE COURT: Sustained.

BY MR. WOODS:

Q. Did you initiate any contact with the press?

A. No, sir.

Q. Did the -- contact with the press happen shortly after your interview with the Government agents?

A. Yes.

Q. And they -- the press initiated the contact with you?

A. Correct.

Q. Okay. When Miss Boylan did that sketch, did you advise her that that was inaccurate in any way?

A. I did not see the final sketch.

Q. The sketch that you saw, the final one -- excuse me.

What sketch did you see before it became final?

A. We had roughed in some of the facial features. She had not completed the final shading.

Q. Did you ever indicate to her that it was as dark as is portrayed in that sketch?

A. No.

Q. Did she ever tell you why she was going to do any

John Davis - Redirect

particular shading?

A. I don't believe that -- I don't know whether it was herself or the producer that was working on that. My understanding was that the final composite would be darker several shades so that after it went through several generations of copying, it would lighten up and still look the way it needed to.

Q. Did you ever describe the individual as that dark as is portrayed in that sketch?

A. No.

Q. Is it accurate as to the darkness?

A. No.

Q. As to the length of hair, is it accurate?

A. Fairly accurate. I never got out a ruler and measured --

Q. Sure.

A. -- the person's hair.

Q. Was -- the individual that you met at that room that night, did he have a burr haircut?

A. No, sir.

Q. When you deal with a individual and you give the food and get the money, do you look at the individual in the face?

A. Usually, yes.

Q. Okay. And did you tell the officers as soon as you could that your recollection is this is not the same person as Tim McVeigh?

A. Yes.

John Davis - Redirect

Q. Did you think that you were trying to help them?

A. Yes.

Q. Did you get the feeling that after that point that you haven't helped them?

MR. MACKEY: Objection.

THE COURT: Sustained.

MR. WOODS: Okay. Thank you, Mr. Davis. No further questions.

MR. MACKEY: Just a couple follow-up questions.

THE COURT: All right.

RECROSS-EXAMINATION

BY MR. MACKEY:

Q. Mr. Davis, you have been asked to go over this transaction a number of times, have you not?

A. Yes.

Q. And I heard you tell the jury that you can't quite understand that because you have been consistent from the beginning about your recall.

A. Yes.

Q. Is that what you told the jury? Is there anything consistent, Mr. Davis, about first telling the police officers "I can't recall faces" and later coming up with your composite drawing?

A. Initial answer would be no.

Q. Just one final question, Mr. Davis. You looked at this

John Davis - Recross

order form for delivery to Room 25, have you not?

A. Yes.

Q. And it is for one order and one order only; correct?

A. Correct.

Q. One customer and one customer only?

A. I would assume so, yes.

Q. Room 25 at the Dreamland?

A. Yes.

MR. MACKEY: That's all.

MR. WOODS: Thank you. He may be excused.

THE COURT: Are you excusing -- all right.

Agreed?

MR. MACKEY: Yes.

THE COURT: You may step down, Mr. Davis. You're excused.

Members of the jury, we'll take our recess. We went longer than we sometimes do, but sometimes, you know, we try to take these recesses sort of according to the flow of the testimony.

So now we'll break for 20 minutes as has been our custom, and of course please continue to follow the cautions given about recesses: Avoiding discussion of the case among yourselves and others, keeping open minds and waiting till you've heard it all before you -- as you know that you must, before you talk about it with other jurors. And of course you must not talk about it with anyone who is not a juror at any time.

You're excused now for 20 minutes.

(Jury out at 10:46 a.m.)

THE COURT: All right. We'll be in recess.

(Recess at 10:47 a.m.)

(Reconvened at 11:05 a.m.)

THE COURT: Be seated, please.

(Jury in at 11:06 a.m.)

THE COURT: All right. Next witness.

MR. TIGAR: Yes. We're calling Mr. Richard Reyna, your Honor. He is in the court with the consent of the Government.

THE COURT: All right. If you'll come forward and be sworn, please.

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

(Richard Reyna 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: Richard Reyna, R-E-Y-N-A.

THE COURT: Mr. Tigar.

DIRECT EXAMINATION

BY MR. TIGAR:

Richard Reyna - Direct

Q. Mr. Reyna, what kind of work do you do, sir?

A. Private investigator, sir.

Q. How long have you been in that business?

A. I went from a police officer to a private investigator, so it's been since 1973.

Q. And before 1973, you were a police officer?

A. No, sir. I started as a police officer in 1973.

Q. I see.

A. And I -- in 1985, I began to do this sort of business.

Q. Now, in 1995, sir, were you doing some investigations connected with the Oklahoma City bombing case?

A. Yes, sir, I was.

Q. And in the course of doing that, did you meet Mr. Roger Moore?

A. Yes, I did.

Q. Tell the jury when you met Mr. Moore.

A. If I may refer to my report?

MR. TIGAR: Yes.

Your Honor --

BY MR. TIGAR:

Q. Do you need that to refresh your recollection?

A. Just on the date, sir.

Q. Go ahead.

A. September 30 of '95.

Q. Where did you meet him, sir?

Richard Reyna - Direct

A. I met Mr. Moore at the Sands Hotel and Casino in Las Vegas, Nevada.

Q. Did you have more than one meeting with him, or just one?

A. I had two.

Q. Will you tell the jury, please, the dates of those two meetings.

A. The first meeting was September 30, 1995. The second meeting was October 1, 1995.

Q. And did he discuss the events that he said had happened to him on the 5th of November, 1994?

A. Yes, he did.

Q. Did he say anything about what -- whether he would or could hurt Timothy McVeigh?

A. He said it both ways. He said he would not hurt Tim McVeigh and he could not hurt Tim McVeigh.

Q. Did he say anything about whose guns were stolen?

A. He said that only his weapons were stolen.

Q. Did he express surprise at that?

A. He was surprised that the other weapons were not touched.

Q. And did he say anything about weapons that he had had in his house and a search warrant? Did he say anything on that subject?

A. He mentioned that it's a good thing that a search warrant had not been executed in his home a few days before because he had more weapons than the people that -- the Davidian people.

Richard Reyna - Direct

Q. Now, did he express -- what did he say was the day on which he was referring to when he said they were glad -- he was glad that the FBI had not executed a search warrant?

A. Okay.

Q. If you need to refresh your recollection, sir, it's at the next-to-last page, the last full paragraph.

A. He just said that he was glad that the FBI did not execute a search warrant at his place on the day after the bombing in Oklahoma City because at the time he had more weapons in his home than were found at the Davidian compound in Waco, Texas.

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

THE COURT: Any, Ms. Wilkinson?

MS. WILKINSON: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good morning, Mr. Reyna.

A. Good morning.

Q. We just met during the break, didn't we?

A. Yes, ma'am.

Q. You were kind enough to speak to me before you took the stand?

A. Yes, ma'am.

Q. Thank you. You were hired or assigned by the court as an investigator for Mr. McVeigh; isn't that right?

A. Yes, ma'am.

Richard Reyna - Cross

Q. And as an investigator, part of your job was to go out and interview witnesses?

A. That's correct.

Q. And when you did that, I assume you were trying to figure out what they had really said and what had really occurred?

A. That is correct.

Q. Trying to find out the truth?

A. Yes, ma'am.

Q. And when you questioned these witnesses, including Mr. Moore, you went over the details of their prior statements?

A. That's correct.

Q. Went over the events?

A. Yes, ma'am.

Q. With Mr. Moore, you talked about the robbery on November 5, 1994?

A. Yes, I did.

Q. And you asked him the details of that robbery?

A. Yes, ma'am.

Q. And he told you those details, did he not?

A. Yes, he did.

Q. He told you that the robber had a ski mask on, didn't he?

A. Yes, he did.

Q. He told you the robber had a shotgun?

A. Yes.

Q. And he told you that he was duct-taped across the eyes?

Richard Reyna - Cross

A. He was duct-taped.

Q. Told you he couldn't identify the robber?

A. He could not identify him.

Q. Didn't he tell you that he was sure it was not Timothy McVeigh?

A. Yes.

Q. Now, after your interviews with Mr. Moore, you wrote up a report?

A. That's correct.

Q. That's your practice, is it not?

A. Yes, ma'am.

Q. And you write up a summary of what the witness told you; correct?

A. Yes, ma'am.

Q. Provide that to the attorneys to assist them?

A. Yes, ma'am.

Q. And when you do that, you try and include all of the relevant information, don't you?

A. Yes, ma'am.

Q. And sometimes you use your own words to describe what happened -- to summarize?

A. To summarize, yes. Sometimes.

Q. And sometimes you use quotes to say what the person said exactly?

A. That's correct.

Richard Reyna - Cross

Q. And we can distinguish that by reviewing your report and see where you put quotes and where you did not?

A. That's correct.

Q. But you do try and include all the information that the witness told you; correct?

A. That's correct, yes.

Q. And did you try and do that when you wrote up your interview of Mr. Moore?

A. Yes, I did.

Q. Could you look at your report -- or can you recall before you look at your report whether you ever wrote anywhere in this report that Mr. Moore told you that the robber had a ski mask on?

Do you need to look at your report?

A. I probably -- I do.

Q. Go ahead.

A. I remember that there was a mention . . .

I did not include that in there.

Q. In fact, you didn't include most of the details of the robbery in this report, did you?

A. I didn't. I just -- I went over with Mr. Moore what he had told the police.

Q. And it was consistent with what you had read in other reports. Is that correct?

A. Yes, ma'am.

Richard Reyna - Cross

Q. So you decided not to include any of that detail in your report?

A. That is correct.

Q. So this is not a complete summary of your interview of Mr. Moore, is it?

A. Obviously it is not.

Q. And you selected certain things to put in this report, did you not?

A. That is correct. And sometimes there are things that sometimes one forgets.

Q. You didn't put any of the real details of the robbery in here, did you?

A. No, because I had attached the police reports as to what he told the police.

Q. Do you mention that attachment in your report?

A. No, I do not.

Q. So if I just have the report, I wouldn't know about the attachment. Is that right?

A. Well, the attachment was given to me by the office. They already knew about it, so --

Q. But you didn't incorporate that attachment in your main report?

A. No, ma'am, I did not.

Q. Now, you've told us that when you put some of the

information in this report, you use your own words to summarize

Richard Reyna - Cross

what Mr. Moore told you; correct?

A. Yes.

Q. And when you talked about whether he could or would not hurt Mr. McVeigh, you didn't use quotes on those words, did you?

A. No, I did not.

Q. And was it your understanding from speaking to Mr. Moore that he was trying -- that he was telling you that he could not hurt Mr. McVeigh because he didn't -- he couldn't identify the robber?

A. That's what I felt at the time, yes.

Q. That's what you understood from him?

A. Yes, ma'am.

Q. And he made it clear to you that he could not -- that he was sure Mr. McVeigh was not the robber?

A. He was sure that he was not the robber.

Q. He also made it clear to you, did he not, that he believed Mr. McVeigh was involved with the robbery?

A. He thought -- he suspected it.

Q. And you included that in your report, did you not?

A. Yes.

Q. Now, you also mentioned in your report, did you not, about this search warrant and the comments about the guns being in his home?

A. That's correct.

Richard Reyna - Cross

Q. You didn't use quotations when you put that in your report, did you?

A. Understand, please, sometimes when I use quotations, it's -- I want to get it to the attention of that -- the reader. It's something that I think is really interesting. On the other hand, sometimes I fail to do that and I can't put a verbatim word for word as to what this -- and how this person told me. It was very difficult. We were going from one subject to another, so I was trying to write everything down as best as I could.

Q. But you can't say it's a verbatim rendition of his statements, can you?

A. It is not verbatim. It's generally what he told me.

Q. And again, we focus on the quotes as things that he told you that you remember he told you directly; right?

A. Yes.

Q. Now, did you take notes when you were interviewing Mr. Moore?

A. Yes, I did.

Q. Did you bring your notes to court?

A. I told you that -- I have no objections. I'll gladly search for them and send them. I'll give you whatever I've

got

you.

Q. They haven't been provided to the Government thus far; correct?

Richard Reyna - Cross

A. No, ma'am.

Q. Mr. Reyna, just one more question: When you reviewed the police reports of the robbery and you listened to Mr. Moore's statements, were there any inaccuracies that you recall?

A. No.

MS. WILKINSON: No further questions.

THE COURT: Mr. Tigar?

REDIRECT EXAMINATION

BY MR. TIGAR:

Q. Mr. Reyna, are you aware of the discovery rules under which items are provided to the Government?

A. Yes, sir.

Q. Okay. And do you know of your own knowledge whether or not typewritten reports or only -- or agent field notes are supposed to be provided? Do you know one way or another in this case?

A. Typewritten reports. That's what we've always been receiving.

Q. Now, did Mr. -- Government counsel asked you about things that Mr. Moore said. Do you remember him saying anything about insurance?

A. Yes. He said that he didn't have insurance to cover the loss.

Q. Did he say anything about the effect of the robbery on him?

A. If I could refer back to my report, please.

Richard Reyna - Redirect

Q. Yes. Next-to-last page, the second full paragraph from the bottom.

MS. WILKINSON: Your Honor, if we could just make it clear whether he's reading from the report, or refreshing his recollection.

BY MR. TIGAR:

Q. Yes. Are you refreshing your recollection?

A. I'm going to refresh my recollection. I won't read from the report.

Q. With your recollection thus refreshed, can you tell us?

A. I haven't found it yet. Sorry, sir.

Q. Second paragraph from the bottom.

A. All right.

And your question again, please.

Q. Yes. Did he say anything about the effect of the robbery on him?

A. Well, he just said that it ruined him or would ruin him.

Q. Now, so that we're clear here, when is the first time that you and I spoke about your coming to testify here today?

A. Last night.

Q. And when did you get here?

A. This morning.
Q. You were asked questions about quotes that -- from
Mr. Moore. Is that correct, sir?
A. Yes, sir.

Richard Reyna - Redirect

Q. Now, would you look, please, at the second-to-last page at
about the middle where it says, "Mr. Moore commented." Do you
see that?
A. Yes, sir.
Q. Do you see the quote marks there?
A. Yes, sir.
Q. And is that what he said to you that you put in quotes
there?
A. That is exactly what he said to me.
Q. Will you read it, please.
A. "The prosecution better not count on me for very much,
because I will not have very much to say because I don't know
anything. I cannot even identify who it was that robbed me."
Q. And did he -- did Mr. Moore say how many people it was that
robbed him?
A. Mr. Moore suggested it could have been two people.
MR. TIGAR: No further questions. Thank you, sir.
THE COURT: Ms. Wilkinson?
MS. WILKINSON: Yes, your Honor.

RE-CROSS-EXAMINATION

BY MS. WILKINSON:
Q. Mr. Reyna, Mr. Moore has been consistent with you that he
could never identify who the robber is; is that right?
A. Yes, ma'am.
Q. And when he told you that the robbery had ruined him, did

Richard Reyna - Recross

he say that it financially ruined him?
A. I would think financially. That's the way I took it.
Q. Well, do you recall what you wrote in your report about
comparing his life to Jennifer McVeigh's life?
A. Well --
Q. How did he say it in that context, Mr. Reyna?
A. Like it ruined him personally, his life.
Q. What was your understanding of that comment? Wasn't it --
didn't you tell me that your understanding was that it was
being associated with this case and the publicity?
MR. TIGAR: Object to "didn't you tell me," your
Honor.

THE COURT: Sustained.

BY MS. WILKINSON:
Q. Mr. Reyna, haven't you said in the past that your
understanding of his statement was that he was concerned about
being associated with this case and the publicity surrounding
this case?
A. That's the way I interpreted it.

Q. That's how you described how he was ruined?
A. Yes, ma'am.
Q. Now, you told Mr. Tigar that Mr. Moore suggested to you that two people could have been involved?
A. Yes, ma'am.
Q. Did he tell you that he only saw one robber -- saw one

Richard Reyna - Recross

robber?
A. He didn't see anyone. He just felt that there was one because one person did all the talking.
Q. Well, he saw the person in the ski mask, didn't he?
A. Well, initially, yes.
Q. So he did see one person?
A. Yes, ma'am.
Q. And didn't he tell you that he heard the first person refer to a second person?
A. No, he didn't.
Q. Did he say that he could have heard a second person?
A. He didn't tell me that he could have heard. He just suspected that there was someone else.
Q. But he told you that he had never seen a second person; isn't that right?
A. That's correct.

MS. WILKINSON: No further questions.

MR. TIGAR: I'm sorry to make it -- but it is -- just what was raised in that.

REDIRECT EXAMINATION

BY MR. TIGAR:

Q. Mr. Reyna, would you look, please, at the second page of your report, the third paragraph. Do you see a reference there to "life being wrecked"?
A. Yes, sir.

Richard Reyna - Redirect

Q. And that's the one -- that's the reference that includes the reference to Jennifer McVeigh; correct?
A. Yes, sir.
Q. Okay. Now, did the subject of the effect of this on his life come up again a second time?
A. No. He just mentioned -- the second time mentioned the loss of the weapons.
Q. Okay. And would you look at the next-to-last page, sir, the second paragraph from the bottom.
A. Okay.
Q. Now, you see "Mr. Moore stated," etc., there. Using that, does that refresh your recollection as to whether or not the subject of the effect of the robbery on him came up a second time?

MS. WILKINSON: Objection, your Honor. The witness didn't say he didn't recall. He said it didn't occur.

THE COURT: Overruled.

THE WITNESS: Again, please

THE WITNESS: Again, please.

BY MR. TIGAR:

Q. Did the subject of the effect of the robbery on him come up a second time in your conversation with him?

A. Yes, sir.

Q. And was that on a different day from the first time?

A. Yes, sir.

Q. Okay. And the -- on the second day, tell the jury what did

Richard Reyna - Redirect

he say the effect of the robbery on him was?

MS. WILKINSON: Objection, your Honor, if he's going to read from the report.

THE COURT: According to your recollection.

BY MR. TIGAR:

Q. According to your recollection.

A. According to my recollection, he said he didn't have any insurance and this would ruin him.

MR. TIGAR: No further questions. Thank you, Mr. Reyna.

MS. WILKINSON: He can be excused, your Honor.

MR. TIGAR: He may be excused.

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

Next witness.

MR. WOODS: Yes, your Honor. Mary Martinez.

Mr. Thurschwell will question.

THE COURT: All right.

MR. NEUREITER: Dale Carlson.

MR. WOODS: I'm sorry. We had a change of order.

It's Dale Carlson.

THE COURT: Dale Carlson?

MR. WOODS: And Mr. Neureiter will question.

THE COURTROOM DEPUTY: Raise your right hand, please.

(Dale Carlson 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: Dale Carlson, C-A-R-L-S-O-N.

DIRECT EXAMINATION

BY MR. NEUREITER:

Q. Mr. Carlson, you and I have never met, have we?

A. Pardon me?

Q. You and I have never met, have we?

A. No.

Q. My name is Reid Neureiter, and I've been appointed to help out Terry Nichols.

Where are you from, Mr. Carlson?

A. Herington.

Q. Is that Herington, Kansas?

A. Yes, ma'am -- yes, sir.

Q. How old are you?

A. 71.

Q. What do you do for a living?

A. Oil field.

Q. Are you retired now?

2. ---- 1 - - - - - ---- .
A. Yes.
Q. Do you know a gentleman by the name of Harry Herbel?
A. Yes.
Q. How do you know Mr. Herbel?
A. When I retired from the oil field, I worked for him just

Dale Carlson - Direct

part-time.

Q. What kind of a business is Mr. Herbel in?
A. Surplus.
Q. And where does he have that business?
A. In Herington.
Q. Can you tell us what kind of facilities he has there in Herington to do his surplus business?
A. He's got two facilities.
Q. What are they called?
A. Surplus City and Surplus Outlet.
Q. What are the locations of those two -- those two businesses?
A. One of them is on 11th Street -- or -- I don't know for sure. I think one is on 5th Street and another one is on Trapp, I think it is.
Q. On Trapp Street?
A. Yes.
Q. And do you work for him on occasion?
A. Yes.
Q. And tell us about how you work for Mr. Herbel.
A. Well, I -- when I retired, why, he couldn't get anybody to work in his carpet deal, so he said he wanted me to go there for a couple months. And I stayed there too long. My wife got sick and got cancer, and so she died in November, '9 -- let's see. A year ago. I took care of her for eight months before

Dale Carlson - Direct

that, so I had to quit Herbel.

Q. In April of 1995, were you helping out Mr. Herbel in his business?
A. Yes.
Q. Was there a particular one of those two businesses, the Surplus City, the Surplus warehouse that you would work at?
A. I worked in carpet. Carpet and ice boxes and stuff like that.
Q. And which location did you work at: the one on Trapp Street, or the other one?
A. I worked on the one on 5th Street.
Q. On 5th Street?
A. And at noon, why, then, I relieved up there when he went to eat.
Q. Is the 5th Street one the warehouse, or is that the Surplus City?
A. Call it the warehouse.
Q. Call it the warehouse. Have you ever met Mr. Nichols

before?

A. Yes.

Q. Around what time period did you meet Mr. Nichols?

A. Oh, I don't know. He come in about -- I suppose three days before the bombing.

Q. Two or three days before the bombing?

A. Yes.

Dale Carlson - Direct

Q. Can you tell us about that interaction.

A. Yeah. He come in and asked if we wanted to trade -- he wanted seven square of shingles, and he wanted to trade army shovels and mattocks and picks.

Q. He wanted some shingles? I didn't --

A. Seven squares of shingles.

Q. Seven squares of shingles. And what was it that he wanted to trade?

A. He wanted to trade mattocks and shovels and picks, and they were army surplus.

Q. For those of us who aren't in the mining area, is a mattock almost like a pick but a little different? It has a long handle?

A. I never did see what he had, but --

Q. He came in and he asked to do that?

A. Yes.

Q. Now, would you have had the authority to go ahead and approve that kind of a trade?

A. No.

Q. Who had that authority?

A. Harry. He was home eating dinner.

Q. That was Harry Herbel?

A. Yeah.

Q. Had he had some kind of medical difficulty that kept him home that day?

Dale Carlson - Direct

A. He had surgery on his leg.

Q. So what did you do after Mr. Nichols --

A. I called him.

Q. -- came in?

A. I called him and told him what he wanted and handed him the phone.

Q. You used "him" a couple times there.

A. Harry.

Q. Did you call Mr. Herbel?

A. Yeah, I called Harry.

Q. And you called him at his home?

A. Yes.

Q. Did you tell Mr. Herbel what was up?

A. Yes.

Q. What did you tell Mr. Herbel?

A. I just told him that he wanted to trade mattocks and stuff

for seven square of shingles and handed him the phone, and he talked to him.

Q. Did you overhear some of that conversation?

A. No, I didn't.

Q. All right. I'm going to show you what has been marked as Defense Exhibit 1759 and ask you if that's a fair and accurate representation of the overhead of Herington, Kansas.

A. Here's Trapp.

Q. Don't describe what's on it. Just say -- does that look

Dale Carlson - Direct

like Herington to you?

A. Oh, yeah.

Q. And do you recognize this down here as being what it says it is?

A. Yeah, uh-huh.

Q. And this business right here?

A. Yeah, uh-huh.

Q. And since the incident in Oklahoma City, have you become familiar with where Mr. Nichols' house is?

A. I know where it is.

Q. Does that accurately indicate where his house is?

A. Uh-huh.

MR. NEUREITER: Your Honor, we move the admission of Defense Exhibit D1759.

MR. ORENSTEIN: May I take a look, your Honor?

THE COURT: Yes, surely.

MR. ORENSTEIN: May I ask one question on voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ORENSTEIN:

Q. Good morning, sir.

A. Good morning.

Q. You were asked if you later found out where Mr. Nichols' home was?

A. Yeah.

Dale Carlson - Voir Dire

Q. Was that told to you by someone else?

A. Well, I just seen everybody down there, so . . .

MR. ORENSTEIN: No objection, your Honor.

THE COURT: All right. D1759 is received, may be used.

DIRECT EXAMINATION CONTINUED

BY MR. NEUREITER:

Q. And those shingles: Do you remember which of the two facilities those shingles would have been at?

A. They'd have been on 5th Street.

MR. NEUREITER: On 5th Street.

If I may approach, your Honor.

THE COURT: Yes.

BY MR. NEUREITER:

Q Is that the --

Q. Is that one

A. Yeah.

Q. Which facility is that?

A. That's the one downtown -- in town, isn't it?
That might be -- yeah, that's it.

Q. Is that where the shingles would have been?

A. Yeah.

MR. NEUREITER: Your Honor, move to publish.

THE COURT: Yes.

BY MR. NEUREITER:

Q. Mr. Herbel (sic), where it says Surplus City on here,

Dale Carlson - Direct

that's where the shingles would have been?

A. Yes.

MR. NEUREITER: No further questions.

THE COURT: All right. Mr. Orenstein.

MR. ORENSTEIN: May I have a moment?

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good afternoon. I'm sorry. Good morning again, sir.

A. Good morning.

Q. My name is Jamie Orenstein.

Sir, the transaction that you had with Mr. Nichols:
That occurred on April 17, two days before the bombing?

A. Something like that. Two or three. I don't remember
exactly.

Q. Did you previously say it was April 17?

A. No.

Q. Okay. And that was the one and only time, whichever day
that was -- that was the one and only time that you saw
Mr. Nichols in your store?

A. Yes.

Q. So you can't account for his whereabouts any other time?

A. (Witness shakes head.)

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

THE COURT: The witness excused?

Dale Carlson - Cross

MR. NEUREITER: Actually, your Honor, I wanted to
clarify.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. NEUREITER:

Q. Around what time do you recall Mr. Nichols coming in?

A. Around noon hour.

Q. Right around the noon hour?

A. Probably 12:30.

Q. Do you remember talking with the FBI about this encounter
on a previous occasion? They came by and they talked to you?

A. (Witness nods head.)

Q. Would it refresh your recollection as to the precise date

that it occurred if I showed you a report that they wrote up of when they talked to you?

A. No, I wouldn't remember.

Q. You wouldn't remember? Even if I showed you a sheet of paper --

A. No.

Q. -- where they had --

THE COURT: He says he wouldn't remember.

MR. NEUREITER: Yes, your Honor.

THE WITNESS: I wouldn't remember. They had so many people and papers and everybody around asking questions.

BY MR. NEUREITER:

Dale Carlson - Redirect

Q. To the best of your recollection, it was two or three days

before the bombing?

A. Yeah.

Q. To your recollection, was it Easter Sunday that he came in?

A. No, it wouldn't have been Easter Sunday.

Q. It was a workday?

A. It might have been before that. I don't remember for sure.

MR. NEUREITER: Thank you very much, sir.

THE WITNESS: Okay.

MR. NEUREITER: Appreciate you coming out.

THE COURT: Excused?

MR. ORENSTEIN: Agreed.

THE COURT: You may step down, Mr. Carlson. You're excused.

Next.

MR. WOODS: Mr. Herbel. Harry Herbel.

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

(Harry Herbel 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: Harry J. Herbel, H-E-R-B-E-L.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

Harry Herbel - Direct

BY MR. NEUREITER:

Q. Hello, Mr. Herbel.

A. Yes.

Q. If you could just lean into the microphone and speak up a little louder.

A. Okay. Thank you.

Q. Mr. Herbel, where are you from?

A. Herington, Kansas.

Q. How old are you?

A. 69.

Q. And what do you do for business?

A. I'm in the surplus business.

Q. And what are the facilities that you have there in the surplus business in Herington?

A. Well, I have a Surplus Outlet and then a Surplus City.

Q. Have you ever met Mr. Terry Nichols?

A. No, I haven't.

Q. Did there come a time -- excuse me. Do you know a Mr. Dale Carlson?

A. Yes.

Q. How do you know him?

A. He works for me.

Q. Does he work at those two facilities you've just described?

A. Well, he don't right now. I mean, he's retired and pretty wealthy man, so . . .

Harry Herbel - Direct

Q. Doesn't need to.

A. No.

Q. In April of 1995, did Mr. Carlson help you out at your surplus stores?

A. Yes.

Q. Around April, 1995, did you get a phone call from Mr. Carlson?

A. That's right.

Q. Can you tell us a little bit about that phone call.

A. Well, he said that he had --

MR. ORENSTEIN: Your Honor --

THE COURT: Just a moment, please.

MR. ORENSTEIN: I'll object to hearsay that's part of the description.

THE COURT: Well, you're asking him not for the truth of the matter but for what was said?

MR. NEUREITER: For what was said, your Honor.

THE COURT: All right.

THE WITNESS: Okay. He said there is a man here that is getting in the surplus business and he wanted to speak to me. And to the best of my knowledge, he spoke to me and he wanted to at that time trade some shovels and picks for some shingles, about seven squares.

BY MR. NEUREITER:

Q. Now, you used the word "he" all through that description,

Harry Herbel - Direct

and I think you might have meant it in two different ways.

Mr. Carlson talked to you first. Correct?

A. Right.

Q. And he said -- what did Mr. Carlson say?

MR. ORENSTEIN: I object to this coming in for the truth.

MR. NEUREITER: It's not offered for the truth.

THE COURT: All right.

BY MR. NEUREITER:

DI MR. NEURELLER:

Q. What did Mr. Carlson say?

A. He said that there was a man that wanted to talk to me that was going into the surplus business or in the surplus business and wanted to do some swapping.

Q. And then did a different voice come on the line?

A. Yes.

Q. Tell me what your conversation was with that person.

A. Well, I don't know -- can't remember quite exactly, but I do remember that he wanted to trade some shovels and picks for some shingles; and naturally, I'm interested in trading. That's what I do.

Q. That is a common practice in the surplus business?

A. Yes.

Q. Tell us about that, bartering in the surplus business.

A. Well, you ever -- trading is something that's pretty important because we always get a hold of something that's hard

Harry Herbel - Direct

to move, but we trade it to somebody else that's got the same thing they can't move; and then it sometimes winds up to be a very good deal for both of us.

Q. And did the gentleman you spoke with tell you where he had gotten all these picks and shovels?

A. No, he didn't. He just had said that he was going -- or Carlson said that he was going into the surplus business or was in the surplus business, and I didn't question it. And that's what the words were.

Q. And did -- what did you tell him about whether you were going to -- going to do the trade?

A. I said that I was laid up at the time but I would be down there in a few days and we would visit on it.

Q. And I'm going to show you an exhibit that has been previously entered into evidence as Defense Exhibit 1759, ask you if you recognize that as an overhead picture of Herington, Kansas?

A. I'm familiar with the streets and stuff, but I -- I think -- yeah, that's the Surplus City, yes.

Q. That's the Surplus City?

A. Yes.

Q. Is that your business there?

A. Yes.

Q. I'm sorry?

A. It was at that time.

Harry Herbel - Direct

Q. It was at that time. It was where the shingles would have been kept?

A. That's right.

Q. Had the voice said that he would go down and look at the shingles on a certain occasion?

A. Well, I presumed he'd probably looked at them and was wanting to do some swapping.

Q. Did there come a time after the bombing when you were back at work and the FBI came to the store?

A. You say -- will you repeat that?

Q. Sure. It was two parts. You were laid up with your problem.

A. Yes.

Q. But did you go back to work in the next -- over the course of that week? Do you recall?

A. Well, I just slipped out and in.

Q. Out and in.

A. Uh-huh.

Q. Did there come a time when you were at this location, the Surplus City location, and some FBI agents came in?

A. No. I was not there then.

Q. You were not there on that occasion?

A. No.

MR. NEUREITER: Okay. No further questions, your Honor.

Harry Herbel - Direct

THE COURT: Any cross-examination?

MR. ORENSTEIN: Very briefly, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good afternoon, Mr. Herbel. My name is Jamie Orenstein.

When you got this phone call, did you tell the man to come back to the store the next day to continue discussing the trade?

A. I presume that I told him that I would be down in the next few days and we could visit on it.

Q. But you never saw him again?

A. No.

Q. So you don't know where he was?

A. No.

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

THE WITNESS: Thank you.

MR. NEUREITER: Witness is excused.

And we appreciate your coming out, Mr. Herbel.

THE COURT: All right. You can go home, Mr. Herbel.

THE WITNESS: Thank you very much.

THE COURT: You're excused.

Next, please.

MR. WOODS: Yes, your Honor. Mary Martinez.

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

(Mary Martinez 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: Mary Louise C. Martinez,

M-A-R-T-I-N-E-Z.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. THURSCHELL:

Q. Good morning, Mrs. Martinez.

A. Good morning.

Q. Mrs. Martinez, where do you live?

A. I live in Junction City, Kansas.

Q. And are you married?

A. Yes.

Q. Do you have children?

A. Four.

Q. Sons, daughters?

A. One son, three daughters.

Q. Where do you work?

A. I work at Geary Community Hospital in the OB Department.

Q. What is your position?

A. I'm a registered nurse.

Q. So you help with deliveries?

Mary Martinez - Direct

A. Yes.

Q. How long have you worked there?

A. About 15 years.

Q. Mrs. Martinez, I'm going to show you what's been entered in evidence as Government's Exhibit 318 and ask -- it should appear before you on your screen.

A. Yes.

Q. Let me ask if you have ever seen this individual in person.

A. Yes.

Q. Do you recall the date that you saw that individual?

A. August 17, 1995.

Q. Now, if I suggested that it might be April 17 --

A. I'm sorry. April 17.

Q. April 17?

A. Yes.

Q. And what time of day did you see him?

A. About 8:20, 8:25 in the morning.

Q. And where did you see him?

A. At the corner of Chesnut and Washington.

Q. And in what city would that be?

A. In Junction City, Kansas.

Q. I'm going to show you what's been entered in evidence as Defense Exhibit 1697.

Let me zoom out first.

Do you recognize this as Junction City, Kansas, a map

Mary Martinez - Direct

of Junction City, Kansas?

A. Yes.

Q. Zooming in, can you identify for the jury where the intersection of Washington Street and Chesnut Streets are on that map? And to do so, please take the pen that's in front of you and you can write on the screen underneath --

A. The red one.

Q. Not that one. There should be one connected to a wire.

A. This one?

THE COURT: No.

THE WITNESS: I'm sorry. Here it is. I've got it.

BY MR. THURSCHELL:

Q. If you could, just holding it upright, could you point to that circle and circle the intersection of Washington Street and Chesnut Street.

I'm sorry. You have to reach under it.

A. Just push this? Okay.

THE COURTROOM DEPUTY: Angle it up. There we go.

THE WITNESS: Right there.

BY MR. THURSCHELL:

Q. Thank you. How did you come to be at that intersection that morning, Mrs. Martinez?

A. I got off work, and then I went to leave my kids at school; and then I was going to go talk to my daughter.

Q. Let me stop you there. Can you see on this map -- well,

Mary Martinez - Direct

where was your daughter at the time?

A. She was at work, at Tri-Star Cable.

Q. Can you identify on this map where Tri-Star Cable is located?

A. Okay. Right about there. Right there.

Q. All right. Did you, in fact, visit your daughter that morning?

A. No, I didn't.

Q. Why not?

A. There was too many cars in the front, so I figured they'd be busy.

Q. Okay. Did you -- where did you go from your daughter's place of work?

A. I turned back around and -- and went back up Washington.

Q. Okay. Could you trace again on the screen the route that you took?

A. Oh. Right there. I just went back up this way.

Q. Okay. Now, I take it you were driving?

A. Yes.

Q. And what kind of vehicle were you driving?

A. Windstar.

Q. And what class of vehicle is that? Is that a compact?

A. Minivan.

Q. Minivan?

A. Uh-huh.

Mary Martinez - Direct

Q. Were you alone?

A. Yes.

Q. All right. Now, how many lanes on Washington Street where it meets Chesnut Street?

A. It's a one-lane both ways: but at that intersection, it

... it's a one-lane both ways, but at that intersection, it gives a little -- a little opening there where they could stop. And where I'm at, they could still go around me and make a right turn.

Q. So there is an extra space on the right at the intersection to make a right turn, but otherwise it's a two-lane going in one way in both directions?

A. Right. But the intersection on his side, there is a little opening there where they get to turn to the left.

Q. Now, when you say "him," I assume you're speaking about the individual who you identified earlier?

A. Uh-huh.

Q. Have you come to learn that that's Timothy McVeigh?

A. Yes.

Q. All right. Now, can you describe for the jury where you were at the intersection and where he was?

A. I was close to the line here that separates, you know, the highway in the middle, and I was close to there; and I was past the pedestrian -- I always go a little bit over. And I stopped, and he was a little bit over, too, on his side. He was going to make a -- going toward Wal-Mart in front of me.

Mary Martinez - Direct

Q. Was he in a vehicle, also?

A. Uh-huh. He was in a Ryder truck. Big, big Ryder truck.

Q. Now, you were facing north on Washington Street?

A. I don't understand by "north," but yes. I was facing that way.

Q. Continuing in the same direction that you were proceeding earlier?

A. Yeah. I know the west and the east, but I don't know the north.

Q. Was he directly across the street facing you in the other lane?

A. Yeah. He was right there in front of me. He was going to make a turn going that way.

Q. And he was -- was he the first car in line there?

A. Uh-huh, yeah. The sunlight was right on him.

Q. What caused you both to stop at that point?

A. The light.

Q. Red light?

A. Yeah.

Q. How wide -- how many lanes is Chesnut Street at that intersection?

A. It's also a two-lane.

Q. Now, how was the light -- not the traffic light but the sunlight that morning?

A. Real bright.

Mary Martinez - Direct

Q. Bright? All right. Could you see directly into the cab --

A. Oh, yeah.

Q. -- of the truck? And about how long did you have to see

into the cab of the truck while you were both standing there at the light?

A. I think we both came up on it right at red, you know; and then the other people were going around him, going straight.

So it was about half a minute, a minute. I don't know.

Q. Was Mr. --

A. Not even that long.

Q. Was Mr. McVeigh alone in the truck?

A. No. He had somebody else with him.

Q. Can you describe -- I'm sorry. Who was driving?

A. Mr. McVeigh.

Q. And was the other individual in the passenger's seat?

A. Uh-huh.

Q. Can you describe that other individual?

A. He had a white T-shirt and black-leather motorcycle jacket on, and he had some blue jeans on.

Q. Could you get -- did you get a sense of his age?

A. It's been quite a while.

Q. If you remember.

A. I don't remember that well.

Q. Okay. Let me ask you: Did you get a good look at this individual at the time?

Mary Martinez - Direct

A. At the time, yes, I did get a real good look at him.

Q. Do you recall his build, body build?

A. Medium-built.

Q. Medium-built?

A. Medium-built.

Q. Do you recall his height, if you could tell?

A. Well, you know, the height of the cab. He got up and moved to another area of the cab, a little bit further up this way, so he could stand the length of the cab.

Q. Okay.

A. And he didn't hit his head or anything. He didn't bend over or anything, so --

Q. So you thought that he was not very tall?

A. Not that tall.

Q. Could you tell his ethnic background?

A. I thought he was Hispanic.

Q. All right. And what made you notice that?

A. I guess -- I really don't remember very well, but I remember from, you know, the -- that he was -- I don't know. I just -- I can't say that I remember now but that he was light -- a little -- his complexion was a little bit more brown than, you know, like a suntan or something.

Q. When you say you really can't remember now, do you have any recollection?

A. Not of the face.

Mary Martinez - Direct

Q. Okay. Not of the face itself. Has your recollection been

refreshed in the past by looking at reports of interviews that were done closer to the time?

A. What do you mean? A composite or something?

Q. No. Has your recollection -- would it refresh your recollection to look at an interview, report of an interview that was done closer to the time that you saw this individual?

A. Oh, you mean by reading those sheets of paper?

Q. Yes, indeed. That's what I'm talking about.

A. No, not really.

Q. Okay. Was there a particular reason that -- that you recall at the time that you paid attention to the individual's ethnic background?

A. Excuse me. What?

Q. Was there a particular reason at the time that you were looking at him that you paid attention, special attention, to the individual's ethnic background?

A. Oh. Because I thought he was here, you know -- I mean looking at him, I thought he might have been an illegal alien from -- coming from -- from Mexico or something, and I was just concerned that he would be out in the open so much that they would be able to see him, the authorities.

Q. As you sit there today, do you remember having that concern?

A. Yes.

Mary Martinez - Direct

Q. And is there some particular reason why that concern would come to mind to you?

A. Well, I guess because of my nationality and of knowing that they're here, you know, to help their families and --

Q. What is your nationality?

A. Spanish, Mexican.

Q. Now, eventually, the light turned green.

A. Uh-huh.

Q. What did you do?

A. I started to -- I looked at him one more time, at the man, the second man. Then I started to -- then I looked back at the light and I said, "It's got to be green by now." So I did, and it was green; so I started to go.

Q. Did you go straight through the intersection?

A. Uh-huh. I went straight through, and he stayed -- they

stayed standing there.

Q. Was that because the light was red for them?

A. Uh-huh. Still red.

Q. And did you notice Mr. McVeigh have a reaction as you drove by?

A. Yeah. Because I looked at the man -- the second man. Then I looked at the light and I started to go, and then I looked back to look at the second man again; and as I started to pass him, I noticed as -- by the corner of my eye that Mr. McVeigh was looking at me all the way past his shoulder with his beady

Mary Martinez - Direct

eyes, and it scared me. It scared me. And nobody had ever looked at me like that.

Q. So this incident made an impression on you?

A. Yes. I went home and told my husband, and he told me not to be so nosey.

Q. All right. Did you eventually see a picture of Mr. McVeigh on television?

A. Yes. The day of the bombing when they -- when they got him in Oklahoma and they got him and put him in a van and I -- that's when I told my husband, "That's the man that was looking at me real bad."

Q. And was that your spontaneous reaction --

A. Uh-huh.

Q. -- upon seeing him?

A. And I said, "I saw him."

Q. Did you report this incident to law enforcement?

A. Yeah. It took about a month, month and a half, something like that.

Q. You didn't do it right away?

A. Well, no. Everybody else was saying that they saw him; and in Junction City, everybody was coming out, the newspaper and the news -- the local news was coming out with a bunch of them saying they saw him here, saw him there.

Q. But you eventually reported it to law enforcement?

A. Yes, I did.

Mary Martinez - Direct

MR. THURSCHELL: Nothing further, your Honor.

THE COURT: Mr. Ryan?

CROSS-EXAMINATION

BY MR. RYAN:

Q. Good morning, Ms. Martinez.

A. Good morning.

Q. My name is Pat Ryan. I'm the United States Attorney in Oklahoma City.

A. Okay.

Q. We've not met, have we?

A. No, we haven't.

Q. I have a few questions for you.

A. Okay.

Q. You were asked on direct examination about the first time that you contacted law enforcement.

A. Uh-huh.

Q. Do you recall that?

A. I was asked what?

Q. Do you recall when you first contacted law enforcement?

A. I don't recall exactly what day, but yeah, I remember.

Q. It was Tom Clark; right?

A. Yes. Yes, I did talk to Tom Clark.

Q. And you saw him at a ballerina class or dancing class that you --

THE COURT: Wait a minute. We can't have two people

Mary Martinez - Cross

talking at once.

THE WITNESS: I'm sorry.

THE COURT: Listen to the question, and then you answer.

THE WITNESS: All right.

BY MR. RYAN:

Q. Do you recall that evening several months after the bombing you saw Mr. Clark and his daughter? They were there at a dance class, and you and your daughter were there at a dance class. Is that correct?

A. Yes, sir.

Q. And you told Mr. Clark that you thought that Mr. McVeigh looked like a fellow that worked over at the Wakefield Retirement Center. Do you remember that?

A. Not that Mr. McVeigh -- that the other man. What I told him was that a patient was at the hospital and that she had said that the second man was working, according to his -- the picture that they came out with -- that the second man was working at a nursing home out at Wakefield; and I asked her if she had talked to the authorities about it.

Q. The second man being the one in the Ryder truck that you're talking about?

A. Yes.

Q. He worked over in the Wakefield retirement home?

A. That is what the patient told me.

Mary Martinez - Cross

Q. And that is what you told Mr. Clark?

A. And I asked the patient if she had told authorities, and she said no.

So I saw Mr. Clark. I mentioned it to him.

Q. When was the first time that you told the FBI agent anything about seeing someone who looked like Mr. McVeigh?

A. When was -- when the -- when you all came and interviewed me.

Q. In June of 1996?

A. I think so.

Q. Sound about right?

A. No, it was cold. It was before that, wasn't it?

Q. All right. You remember it being many months after the bombing?

A. Right.

Q. And do you remember telling the FBI agent at that time that the truck you saw was yellow?

A. Uh-huh.

Q. But it had no labeling on it. Remember telling that?

A. He said that if I didn't remember the labeling, then it wasn't, you know -- that it -- that I didn't have to say I did.

Q. Did you -- did you tell him that you did not remember any labeling on the truck?

A. It's been a long time. I guess. I guess that's what I told him.

Mary Martinez - Cross

Q. Since the time you first talked to the FBI, you remember that this truck had Ryder labeling on it?

A. Uh-huh.

Q. And where did you see this Ryder labeling that you're now telling the jury about?

A. Where did I see it?

Q. Yes.

A. On the trucks.

Q. On what part of the truck?

A. On the side of the truck.

Q. Do you remember telling a defense investigator only a month ago that -- while you told the FBI there was no labeling on it, you told the defense investigator a month ago that the labeling was on the front part of the truck, a portion of the truck that hangs over the top of the cab?

A. Yes.

Q. Do you remember telling him that?

A. Uh-huh.

Q. Has your memory changed since then? You now remember it on the side of the truck?

A. Well, I don't know. I guess I don't remember it that well.

Q. Are you sure you remember labeling at all?

A. Yes, I remember some labeling, but --

Q. Do you remember telling the FBI that the driver of the Ryder truck had red hair?

Mary Martinez - Cross

A. Had blondish-red hair.

Q. Did you tell him that he had light-red hair?

A. He had blondish-red hair, yeah.

MR. RYAN: May I approach, your Honor?

THE COURT: Yes.

BY MR. RYAN:

Q. I refer you to page 3 of this interview.

MR. THURSCHELL: Could you identify the 302 number?

MR. RYAN: Yes. It's the interview in -- excuse me, ma'am, just a moment.

56120, page 3.

BY MR. RYAN:

Q. Would you read this paragraph, and I'm going to ask you if that refreshes your recollection?

A. "After seeing --"

THE COURT: No, to yourself.

BY MR. RYAN:

Q. Just to yourself.

A. Oh, I'm sorry.

Q. Just read that paragraph to yourself.

I'm going to ask you about the first four or five

I'm going to ask you about the first four or five lines of the paragraph. Okay?

A. Oh, okay. I was reading the rest of it.

Q. Now, having read this FBI report, does that refresh your recollection that you told the FBI that the man had -- the

Mary Martinez - Cross

driver had light-red hair?

MR. THURSCHELL: Object without the additional word in front of that expression.

BY MR. RYAN:

Q. "Very light-red hair." Does that refresh your recollection that you told the FBI that the driver had very light-red hair?

A. Yes.

Q. And is that your recollection today; that the driver had very light-red hair?

A. Well, when I saw it with the sunlight, it was like white-red, you know, blondish-red.

Q. And that's the only time you saw him?

A. Huh?

Q. That's the only time that you saw this man who was driving the yellow truck?

A. Uh-huh. That's the only time I've seen him.

Q. And you described that hair as being very light-red hair?

A. Light-red hair, yes.

Q. Now, I want to talk to you a moment about the passenger.

You say the passenger was standing up in the vehicle?

A. Well, he moved over to the -- to another position.

Q. And his head -- he didn't have to crouch down; his head completely cleared the top of the cab?

A. True.

Q. And did you conclude -- have you ever rented a Ryder truck?

Mary Martinez - Cross

A. No.

Q. Any type of a moving vehicle?

A. I rode in one once.

Q. And did you conclude based on what you -- what your life experiences are that person must have been very, very short to be able to stand up fully erect inside of the cab of a Ryder

truck?

A. Well, one time I -- my car had a flat and an 18-wheeler came by and gave me a ride. It had a piggyback with it, and I got into that like an 18-wheeler truck; and I could stand up in it and there would be a little bit more extra room. I wouldn't hit my head, so . . .

Q. And is that what you saw on this morning, was an 18-wheeler Ryder truck?

A. No. I saw the Ryder truck.

Q. Was it an 18-wheel truck?

A. No, it wasn't 18-wheeler.

Q. In any event, the truck you saw, the man was able to stand

fully erect inside the vehicle?

A. Yes.

Q. And this man you've described before as being 140 to 150 pounds. Is that correct?

A. Okay. Yes.

Q. And you've described him as having a black mustache?

A. I don't remember anymore.

Mary Martinez - Cross

Q. You described him as having black hair to the shoulders?

THE COURT: Are you asking about on a prior occasion?

MR. RYAN: Yes. I'm sorry, your Honor.

THE COURT: All right.

BY MR. RYAN:

Q. Have you said in the past that the passenger inside the Ryder truck had a black mustache and black hair to his shoulders?

A. According to that that you showed me, yes, I said that.

THE COURT: No, you're being asked what you remember now --

THE WITNESS: I don't remember it now.

THE COURT: No, listen, please. What you remember now

saying on a prior time, not just what you read but whether you remember saying this before, the things that Mr. Ryan is asking you. Do you?

THE WITNESS: No, I don't remember.

MR. RYAN: May I approach, your Honor?

THE COURT: Yes.

BY MR. RYAN:

Q. I'm going to refer you to page 3. It's the same 302. Beginning with "however," if you'll just read that to yourself.

A. Okay.

Q. Thank you. Now, Mrs. Martinez, did you tell -- has this refreshed your recollection as to what you told Special Agent

Mary Martinez - Cross

Gary Witt in 1996 when you were first interviewed by the FBI?

A. Yes.

Q. Do you now recall that you told the FBI agent at that time that this man weighed 140 to 150 pounds?

A. Yes.

Q. And that he had a black mustache that was cut straight and not curled at the sides?

A. I don't even remember anything about -- about talking to him, you know, as to what specifically I said. I don't remember what he looked like.

Q. And so you have no recollection of telling the agent at that time that the passenger had black, bushy hair that was cut just above his shoulders?

MR. THURSCHWELL: I'm going to object. Asked and answered.

THE COURT: Overruled.

THE WITNESS: Excuse me. What did you ask again?

BY MR. RYAN:

Q. I asked you if you have a recollection, Mrs. Martinez, of telling Special Agent Gary Witt in 1996, the passenger in the Ryder truck had black, bushy hair that was cut just above his shoulders.

A. I think that's what I described back to him again when he came; that he was medium-built, had a black-leather coat on and white T-shirt and blue jeans.

Mary Martinez - Cross

Q. You described -- or I think you told us on direct examination that you were in some type of a minivan.

A. Right, in my Windstar.

Q. Windstar minivan. And across the intersection you could see the passenger's clothing?

A. The passenger? Yeah.

Q. And you described his coat and his shirt and his pants.

A. Right.

Q. Now, you have told us today that the man you saw driving the vehicle was Timothy McVeigh; is that correct?

A. Yes.

Q. And do you recall that on October 17, 1997, you were interviewed by a H. C. Bodley, an investigator employed by the Nichols defense team?

A. Uh-huh.

Q. Remember that?

A. Yes.

Q. And do you remember telling Mr. Bodley approximately a month and a half ago that you could not swear that the man you saw in the truck was Tim McVeigh?

A. I've never seen him -- what do you call it -- now, after I saw him that day. I mean person to person. I've never seen him. Just in -- in pictures and in the movie -- in the TV.

Q. You realize you're under oath?

A. Yes.

Mary Martinez - Cross

Q. And everything you say, you're swearing to today.

A. Yes.

Q. And my question is did you say to Mr. Bodley a month and a half ago that you could not swear that this man you saw in the Ryder truck was Timothy McVeigh?

A. Yes, because I haven't seen him in person.

Q. So you're -- excuse me. I didn't mean to interrupt you.

A. I'm sorry. Go ahead.

Q. So you're not telling this jury that you know the man you saw was Timothy McVeigh, are you?

A. Right. Because I haven't seen him in person here.

Q. Now, the location that you showed us on the diagram of where you had the sighting of this yellow truck with the two

men in it, you said was at Chesnut Street and Washington?

A. Yes.

Q. And how far is that intersection from 6th Street and Washington?

A. I don't know.

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

A. 6th Street and Washington?

Q. Yes, ma'am.

A. Let's see. Chesnut, then 1st Street, 2nd Street -- about six, seven blocks.

Q. And there is a Ryder dealership right there at 6th and

Washington -- isn't there -- the hardware True Value?

Mary Martinez - Cross

A. The True Value, yeah. There is a True Value there.

Q. And there is a Ryder dealership at that location?

A. On the other side, yeah. On the other side.

Q. About six blocks from where you were?

A. No. You have to go up Washington to 6th, then you have to take a right, then you go down about a block and then -- and then after that on the second block, that's where the Ryder things are at.

Q. How far were you from that Ryder dealership when you had this sighting of this yellow truck with two men?

A. I was seven blocks and then eight blocks.

THE COURT: I'm going to have to interrupt this. I have to take a recess at this point.

You may step down.

Members of the jury --

You may step down.

We're going to take our usual noon recess. I hate to interrupt the testimony of a witness, but I've got to. We'll recess till 1:40; and again, of course, the usual cautions and conditions: Avoid discussion of the case, anything about what you're seeing or hearing or have seen and heard, and continue to avoid anything outside the evidence that could influence you in your decisions.

You're excused till 1:40.

(Jury out at 12:10 p.m.)

THE COURT: We'll be in recess.

(Recess at 12:10 p.m.)

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PLAINTIFF'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
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DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
D1652A	12053	12054			
D1707-D1708	12076	12077			
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REPORTERS' CERTIFICATE

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. Dated at Denver, Colorado, this 3d day of December, 1997.

Paul Zuckerman

Kara Spitler

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