

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 96-CR-68

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TERRY LYNN NICHOLS,
Defendant.

REPORTER'S TRANSCRIPT

(Trial to Jury: Volume 104)

PROCEEDINGS BEFORE THE HONORABLE RICHARD P. MATSCH,

Judge, United States District Court for the District of Colorado, commencing at 1:40 p.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

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

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

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

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PROCEEDINGS

(Reconvened at 1:40 p.m.)

THE COURT: Be seated, please.

(Jury in at 1:40 p.m.)

THE COURT: Miss Martinez, if you'll resume the stand, please.

Mr. Ryan, you may continue your questioning.

MR. RYAN: Thank you, your Honor.

(Mary Martinez was re-called.)

CROSS-EXAMINATION CONTINUED

BY MR. RYAN:

Q. Miss Martinez, I just have a few more questions for you.

A. Yes, sir.

Mary Martinez - Cross

Q. Originally when you were -- when you spoke to the FBI, you told them that the date of the sighting was the day before the bombing or April 18; is that correct?

A. I did.

Q. And today you've testified it's not April 18, it's April 17?

A. Right.

Q. Did I understand you correctly?

A. Yeah.

Q. You've changed your testimony or your recollection based on some information you reviewed from the hospital?

A. I reviewed, yeah, from Mr. Newtermeyer.

Q. Let me show you what's been received in evidence as Defendant's Exhibit 1737. While we're waiting for it to come on, let me ask you a question or two. You remember you told me this morning that the truck that you saw that morning had this cab part of the box that came over the top of the cab?

A. Uh-huh.

Q. Now, do you see what -- the first one down, they get increasingly smaller, in this Exhibit 1737?

A. Yep.

Q. You see that? And the only one that has something over the cab is this second one?

A. Right.

Q. Do you see that?

Mary Martinez - Cross

A. Uh-huh.

Q. Where it says "one to two bedrooms"? You see what I'm talking about?

A. Yes, I see it, sir.

Q. Is that the kind of cab -- is that the kind of compartment, storage compartment over the cab that you were referring to?

A. I don't recall.

Q. Well, how did it differ from that, what you recall seeing?

A. I remember the Ryder truck being a great big Ryder truck.

Q. Yes, ma'am.

A. And I can't remember the front of it.

Q. You remember when you told Mr. Bodley --

A. Yes.

Q. -- on October 17 that it had a extension compartment over the truck cab?

A. Uh-huh.

Q. Is that the type of extension compartment you were referring to?

A. Yes.

Q. The one that's shown, the second one down here?

A. I guess, yeah.

Q. Okay.

A. But it was -- it looked like it was bigger than that one.

Q. But the other two bigger ones on this exhibit don't have that extension --

Mary Martinez - Cross

A. I know.

Q. -- over the cab, do they?

A. No, they don't.

Q. All right. Finally, Mrs. Martinez, you've lived in Junction City for how long?

A. About . . . about 12 years.

Q. And your husband is retired military, is he not?

A. Right. We lived on Fort Riley for 12 years.

Q. There's a lot of military people at Fort Riley; correct?

A. Yes.

Q. Back in 1995, there were quite a few servicemen stationed there, were there not?

A. Yes, sir.

Q. Do you know how many?

A. No, sir.

Q. There would be 10-, 15,000 soldiers there at any one time, would there not?

A. Yes, sir.

Q. And lots of moving in and out; is that correct?

A. Yes, sir.

Q. Lots of moving vans in Junction City at all times; is that fair?

A. In the summertime, yes, sir.

Q. As these soldiers are coming in and out --

A. Right.

Mary Martinez - Cross

Q. -- of their assignments, there's a lot of storage vehicles moving around the Junction City area?

A. That's what struck me odd was because it was so early in the year.

Q. But you thought yourself, this was somebody moving, didn't you?

A. Well, I looked at it and I said, "Somebody moving." And I said -- I looked at the man driving and I said, "Oh, he's military. They're starting early this year."

Q. And the reason you felt that way is there's a lot of people in Junction City -- lot of men stationed at that Fort Riley --

A. Yes.

Q. -- with short haircuts, is there not?

A. Yes.

Q. And a lot of military people have military haircuts; right?

A. Yes, sir.

Q. So you've seen many, many people, men, every day in Junction City with short, crew-cut hair?

A. Yes, sir.

MR. RYAN: That's all I have. Thank you, your Honor.

THE COURT: Mr. Thurschwell, do you have some follow-up?

MR. THURSCHELL: Yes, I do.

REDIRECT EXAMINATION

BY MR. THURSCHELL:

Mary Martinez - Redirect

Q. Mrs. Martinez, you were just asked about the presence of moving vans in Junction City and the fact that there's an Army base there. When do you usually see moving -- moving vans with military-looking people driving them?

A. Around June.

Q. Around June. And is that because that's the typical time when the new recruits come in?

A. Yeah, June, July, and August.

Q. I want to show you once again what's been marked as Government's Exhibit G318. Mrs. Martinez, is this what the driver of the Ryder truck that you saw looked like?

A. Yes, sir.

Q. Have you ever seen Timothy McVeigh in person?

A. No, sir.

Q. You could not, then, compare one certain sighting of Timothy McVeigh with another sighting of Timothy McVeigh, could you?

MR. RYAN: Objection, leading.

THE WITNESS: No, sir.

THE COURT: Overruled.

THE WITNESS: No, sir.

BY MR. THURSCHELL:

Q. Now, you were asked about an interview that was conducted with the FBI some time ago; correct?

A. Yes, sir.

Mary Martinez - Redirect

Q. And you were asked some questions about your description of the passenger in the truck to the FBI at that time. Do you remember that?

A. Excuse me. Go ahead.

Q. Do you remember being asked about your descriptions of the passenger when you were speaking to the FBI, by Mr. Ryan, just now?

A. The first time or the second time?

Q. Well, he was asking you about the first time, I think.

A. Very first time, about a year and a half ago.

Q. Okay.

A. Or two years ago.

Q. And Mr. Ryan was just asking you about that and the things that you told the FBI?

A. Uh-huh.

Q. Do you remember telling the FBI at that time about the passenger, one time he did raise up and appear to move his legs in an effort to shift away from the driver?

A. I don't know if it was away or toward the driver. He was trying to get situated on another sitting position.

Q. He was shifting from one side to another?

A. Yeah. I don't know whether it was away or to. I forgot

that part.

Q. When you said that the driver -- that the person stood up, is that what you were referring to?

Mary Martinez - Redirect

A. Yeah, he stood up and moved over.

Q. Okay. Was he -- could you tell if he was fully erect or that his knees were bent?

A. No, he was fully standing up.

Q. Okay. Was he -- was this individual, could you tell, an adult or a child?

A. He was an adult.

MR. THURSCHWELL: No further questions.

THE COURT: Mr. Ryan?

MR. RYAN: No recross, your Honor.

THE COURT: I take it she's excused.

MR. THURSCHWELL: She is excused, your Honor, yes.

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

Next, please.

MR. WOODS: Nancy Kindle, your Honor.

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

(Nancy Kindle 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: Nancy Jean Kindle, K-I-N-D-L-E.

THE COURTROOM DEPUTY: Thank you.

THE WITNESS: Uh-huh.

DIRECT EXAMINATION

Nancy Kindle - Direct

BY MR. NEUREITER:

Q. Hello, Miss Kindle. How are you?

A. Fine.

Q. We've met before, haven't we?

A. Yes.

Q. Over the last few days?

A. Yes.

Q. How old are you, Miss Kindle?

A. 22.

Q. Where are you from?

A. Junction City, Kansas.

Q. What do you do for a living?

A. I work at Denny's, and I'm a home health aide.

Q. Do you go to college?

A. Yes.

Q. Where do you go to college?

A. At Cloud Community College.

Q. What are you studying?

A. Nursing.

Q. Do you have a son?

A. Yes.

Q. How old is he?

A. Six. Well, he'll be six in January.

Q. I want to take you back to the Easter time period of 1995. Do you remember Easter, 1995?

Nancy Kindle - Direct

A. Yes.

Q. Did you have to work on Easter, 1995?

A. Yes.

Q. Where were you working on Easter, 1995?

A. At Denny's.

Q. And what was your shift that day?

A. 6 a.m. till 2 p.m.

Q. Do you remember a specific group of individuals who came in and tried to get seated that day?

A. Yes.

Q. Could you tell us about that.

A. I was waiting tables, and I wasn't busy, so I went up to help the hostess. And I come across a three -- party of three for smoking.

MR. TIGAR: Excuse me, your Honor. Could we ask Miss Kindle to keep her voice up just a little bit. I for one am having just a little trouble hearing.

THE WITNESS: Sorry.

BY MR. NEUREITER:

Q. Actually, if you could lean towards that microphone, it really helps.

A. Okay.

Q. So you just said you came up to a party of three, you were helping out the hostess?

A. Yes.

Nancy Kindle - Direct

Q. And then what happened?

A. And I asked the gentleman how many, and he said three for smoking. And I asked him to spell his name for me.

Q. And what did he say his name was?

A. McVeigh.

Q. And how did he spell his name?

A. M-C big V-E-I-G-H, or however it's spelled.

Q. Did you have some conversation with the gentleman about the spelling of his name?

A. Yes.

Q. Tell us about that.

A. Well, I was just commenting on how it was silly to have it, you know, M-C and then a big letter and my aunt had a name like that and just kind of just chitchatting.

Q. Was there a prior time when you testified in court?

A. Yes.

Q. Do you recall? And did you see a gentleman named Timothy McVeigh when you testified that time?

McVeigh when you testified that time:

A. Yes.

Q. And was that the same person that you saw on Easter Sunday, 1995?

A. Yes.

Q. And how do you know that that was the same person?

A. Because I remembered him by his eyes and the way he spelled his name.

Nancy Kindle - Direct

Q. Now, you said it was a group of three?

A. Yes.

Q. Do you have a recollection of what the other two gentlemen looked like?

A. The second man was about 5' 7", real scraggly hair, kind of out of sorts. And the third one I didn't pay much attention to at all.

Q. Were the gentlemen seated?

A. Yes.

Q. Where were they seated?

A. In non-smoking.

Q. Did you have a discussion with Mr. McVeigh about that?

A. Yes.

Q. Tell us about that.

A. I was just kind of joking 'cause they had -- they had to sit there and wait, and they was the last people waiting. And we finally said, you know, "We have one open in non. You know, would you take it?" And they finally said yes.

Q. And you see a lot of people at Denny's?

A. Yes.

Q. Is there a reason why you remember this encounter specifically on Easter Sunday, 1995? Let me ask it this way. Did you do something else on Easter Sunday, 1995?

A. Yes.

Q. Where did you go after you got off work?

Nancy Kindle - Direct

A. I went to get my son, and then I went home to get ready 'cause I was going to a Easter-egg hunt out at Milford Lake, and I ran into him at the gas station.

Q. What time did you get off work?

A. About 3, 3:30.

Q. By the way, I'm not sure we fixed the time of the first encounter. About what time would that first encounter have been?

A. It was about 12:30, 1:00.

Q. Around the noon hour?

A. Yes.

Q. Easter Sunday?

A. Yes.

Q. Was that a busy time at Denny's?

A. Yes.

Q. Is that why you went to help the hostess?

A. Yes.

Q. So now getting to you got off work. What time did you get off work that day?

A. About 3, 3:30.

Q. And then what did you do?

A. Then I went to get my son. And then I went home and changed, and then I went to get gas.

Q. And there was an Easter-egg hunt that day?

A. Yes.

Nancy Kindle - Direct

Q. Is that where you were taking your son?

A. Yes.

Q. And where did you go get gas?

A. At Texaco.

Q. Tell us about the encounter at Texaco.

A. I was walking in, and the gentleman -- he was walking out.

Q. Who was walking out?

A. McVeigh.

Q. And was it the same individual that you had seen earlier that day?

A. Yes.

Q. Did you say something to him at that time?

A. Yes. I said, "Hi, how you doing?" You know, "Hey, what's going on?" And he spoke. And I walked in, and he walked out.

Q. What's the best that you can fix that second encounter in your mind, to your recollection, given that he got off work between 3, 3:30? What time around do you think it would have been that you had that second encounter with Mr. McVeigh?

A. It was between 4:30.

Q. 4 and 4:30?

MR. RYAN: Objection, leading.

MR. NEUREITER: Sorry.

BY MR. NEUREITER:

Q. What's your best recollection of that time?

A. In between 4:30.

Nancy Kindle - Direct

THE COURT: In between 4:30?

THE WITNESS: Well, I was supposed to be there at 5, so I know I was trying to rush 'cause it's like a 15-mile drive.

BY MR. NEUREITER:

Q. Around the 4:30 time period?

A. Yeah.

MR. NEUREITER: If I could have one moment, your Honor?

THE COURT: Yes.

BY MR. NEUREITER:

Q. Where is the Denny's that you work at in Junction City?

A. It's on Washington.

Q. Is it near McDonald's there?

A. 1032 South Washington.

Q. Is there a -- is it near McDonald's there?

A. Yes, a block away.

Q. And are there two McDonald's in Junction City, to your knowledge?

A. Yes.

Q. And which McDonald's is your Denny's near?

A. The one right beside the interstate.

MR. NEUREITER: No further questions, your Honor.

THE COURT: Mr. Ryan.

CROSS-EXAMINATION

Nancy Kindle - Cross

BY MR. RYAN:

Q. Good afternoon, Miss Kindle. My name is Pat Ryan. I'm one of the prosecutors in this case.

Did you get a call yesterday asking if you would agree to talk to me about your testimony?

A. Yes.

Q. And did you tell the lady that called that you wouldn't agree to speak to one of the prosecutors?

A. I told her that I was supposed to be going on this afternoon and she had my testimony and . . . she could just read the testimony.

Q. Did you tell her that you wouldn't talk to one of the prosecutors?

A. I told her that I was going on; I didn't want to, yes.

Q. Now, you've told us today that you saw a man who resembled Timothy McVeigh; is that correct?

MR. NEUREITER: Objection, your Honor.

THE COURT: Sustained. Sustained.

BY MR. RYAN:

Q. Have you previously said that you saw a man who resembled Timothy McVeigh?

A. Yes.

Q. And what time was that?

A. What time I seen him?

Q. When you first saw that person?

Nancy Kindle - Cross

A. At 12, 12:30. I mean 12:30, 1. Sorry.

Q. And they were waiting in the smoking section?

A. No, they were waiting --

Q. Is that what you said?

A. They were waiting in the front of the restaurant.

Q. Were they in a section designated for smoking in your --

MR. NEUREITER: Objection, your Honor.

BY MR. RYAN:

Q. Waiting --

MR. NEUREITER: Mischaracterizes the testimony.

THE COURT: He asked were they in a section for smoking.

Is that your question?

is that your question?

MR. RYAN: Yes, your Honor.

THE COURT: The objection is overruled.

THE WITNESS: No, they were in the front, right as

you

walk in the door, waiting.

BY MR. RYAN:

Q. Do you have a recollection of them wanting to be seated in the smoking section and the hostess, Miss D'Avino -- I may not be pronouncing that correctly.

A. D'Avino.

Q. -- asking them if they would rather be seated earlier in the non-smoking section?

A. Yes.

Nancy Kindie - Cross

Q. Now, you said you got off between 3 and 3:30; is that correct?

A. Yes.

Q. Was this gentleman and the other two men -- were they still there?

A. No, they had already left.

Q. And when had they left?

A. I wasn't really paying attention. I was trying to do side work and go home, 'cause I wanted to get to my son.

Q. Was it close to 3:00 that they left, or do you know?

A. I couldn't tell you for sure.

Q. You said you looked at Mr. McVeigh's eyes?

A. Yes.

Q. Or the man that you saw, you looked at his eyes? What color were his eyes?

A. Blue.

Q. The -- you said that you later saw this -- well, before we do that, let's talk about the other two men that were with this gentleman.

You said one of them was 5' 7" --

A. Yes.

Q. -- or so?

A. Yes.

Q. Short, brown hair?

A. No, the hair was not short.

Nancy Kindie - Cross

Q. Did you -- were you interviewed by Special Agent Marcus Moet?

A. Yes.

Q. On April 29, 1995?

A. Yes.

Q. And did you tell Agent Moet the second individual was 5' 7" with short, brown hair?

A. Scraggly, brown hair.

Q. My question was did you tell him that the second man was 5' 7" with short, brown hair.

A. I don't remember.
Q. Now, this third person -- how tall was he?
A. I don't remember.
Q. What color was his hair?
A. I don't remember.
Q. Length of his hair?
A. I don't remember.
Q. Any clothing that you can recall?
A. No.
Q. Color of his eyes?
A. No.
Q. Mustache or beard?
A. No.
Q. Don't recall? When you say "no," are you saying you don't recall?

Nancy Kindle - Cross

A. I don't recall.
Q. So no matter what person I gave you, asked you if it was that person, you wouldn't know because you have no picture whatsoever in your mind of this person?
A. Yes.
Q. Is that true?
A. Yes.
Q. Could have been anyone?
A. Yes.
Q. And similarly, with respect to this person that was 5' 7" with the brown hair, do you recall any other features of this person?
A. I just remember he looked rough and kind of dirty.
Q. Weight?
A. He was medium build.
Q. Do you know how much he weighed? Do you have an estimate for us?
A. No.
Q. Did he have any tattoos or marks?
A. No.
Q. No, you don't recall; or, no, he did not?
A. No, I don't recall.
Q. Do you know what race he was?
A. White.
Q. Can you tell us anything about his clothing?

Nancy Kindle - Cross

A. No.
Q. Now, you say that later that afternoon, you saw this same man who had been in the Denny's at a Texaco; is that correct?
A. Yes.
Q. And you were there to buy gas?
A. Yes.
Q. And you were running a little late for an Easter-egg hunt; is that correct?

A. Yes.

Q. Easter-egg hunt was at 5:00?

A. Yes.

Q. Did you have your son with you -- or your child?

A. Yes.

Q. And that's, what, about a 15-minute drive to where the Easter-egg hunt was?

A. Yes.

Q. So when you said between 4:30, were you talking about 4:30, 4:45, something like that?

A. Yes.

Q. And was your car parked at one of the gas lanes where you had just gotten gas?

A. Yes.

Q. You were going in to pay when you saw this gentleman again?

A. Yes.

Q. Is that correct? And he was walking out?

Nancy Kindle - Cross

A. Yes.

Q. As if he had just paid for gas or paid for something inside?

A. Yes.

Q. It was a gas station; right?

A. Yes.

Q. Now, did you at any time, at this time frame of 4:30, 4:45 the Sunday afternoon, see a yellow Mercury Marquis?

A. No.

Q. Did you at any time that afternoon see a Ryder truck?

A. No.

Q. Did this man who you saw -- was he with these other two people again?

A. All I saw was him.

Q. And did you talk to him?

A. I said hello as I was walking in, and he said hello back.

Q. You were in a hurry?

A. Yes.

Q. He was not?

A. He was walking out. I was walking in.

Q. He didn't appear to be in any hurry, did he?

A. I don't know how you can clarify "hurry."

Q. Was he walking particularly fast? Did he seem real focused on where he was going? Did he seem like someone who was in a rush?

Nancy Kindle - Cross

A. No.

Q. Did he seem like someone who was very determined to get in a vehicle and make a long trip and just was very focused on making that trip?

MR. NEUREITER: Objection, your Honor.

THE COURT: Sustained.

BY MR. RYAN:

Q. Did you ever see this man with a vehicle of any kind?

A. No.

Q. Or get into a vehicle?

A. No.

Q. You say this was 4:30 to 4:45?

A. Yes.

MR. RYAN: Thank you. No further questions, your Honor.

MR. NEUREITER: Just a couple, your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. NEUREITER:

Q. Miss Kindle, after you testified in the prior proceeding we talked about, were you contacted by the FBI?

A. Yes.

Q. Was that a pleasant experience for you?

A. No.

MR. RYAN: Objection, your Honor.

Nancy Kindle - Redirect

THE COURT: Sustained.

BY MR. NEUREITER:

Q. Is the reason why -- tell the jury why you decided not to talk to the prosecutors this time.

A. Because I've been bothered by so many people that I didn't know who was calling me, if it was reporters, who it was. And I just wanted to be left alone. That's all I've ever asked. I've asked reporters to give me and my family peace, especially my son.

Q. The last time that you testified and you were then contacted by the FBI, did the FBI get you to change -- try and get you to change your testimony?

MR. RYAN: Objection, your Honor.

THE COURT: Sustained.

BY MR. NEUREITER:

Q. Did you feel -- describe --

THE COURT: You can ask what they asked about --

MR. NEUREITER: Very well, your Honor.

THE COURT: -- but not characterize it.

BY MR. NEUREITER:

Q. Describe to the jury the conversations you had with the FBI after your last testimony.

A. They just -- I put them on speakerphone so my family could hear how they kept on asking me over and over if I'm sure I didn't remember some or if I'm sure that that was the man I

Nancy Kindle - Redirect

seen. And then it started to get me irritated because they had two of them on the phone talking back and forth; and finally, I said, you know, "I've had enough," you know, "I'm home," you know, "Can you -- sorry -- can you please leave me alone."

Q. Would they leave you alone?

Q. Would they leave you alone.

A. They kept on asking me questions.

MR. NEUREITER: No further questions, your Honor.

MR. RYAN: Make I have just a moment, your Honor?

THE COURT: Yes.

RE-CROSS-EXAMINATION

BY MR. RYAN:

Q. Miss Kindle, the fact is you've been contacted twice in your entire life about this matter by the FBI; is that correct?

A. No. They contacted my hotel about six times.

Q. To try to get you to talk to someone before you testified in another trial?

A. No.

Q. Is that right?

A. No.

Q. And you at any time testify -- and you didn't talk to a prosecutor the last time you testified either, did you?

A. No.

Q. And you wouldn't testify -- you wouldn't talk to a prosecutor this time?

A. They didn't ask me last time.

Nancy Kindle - Recross

Q. You wouldn't even if they'd 've asked you?

MR. NEUREITER: Objection, your Honor.

THE COURT: Sustained.

MR. RYAN: No further questions.

MR. NEUREITER: The witness is excused.

Thank you, Miss Kindle.

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

Next, please.

MR. WOODS: Yes, your Honor. Miss Weigel, Miss Estella Weigel.

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

(Estella Weigel 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: Estella Weigel, W-E-I-G-E-L.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. NEUREITER:

Q. Hello, Miss Weigel. How are you?

A. Fine.

Q. We met for the first time a couple days ago; is that right?

A. Yes.

Q. Where are you from, Miss Weigel?

Estella Weigel - Direct

A. I live in Salina, Kansas, and I work in Newton, Kansas.

Q. How old are you?

A. I am 41.

Q. I hope you don't take offense at my asking.

A. I'm 41.

Q. What do you do for a living?

A. I'm a health information management technician.

Q. And what does being a health information management technician entail?

A. It makes -- what I do is I make sure that the completion of the medical record is done, and I also know a little bit about the regs. that require that the record be completed.

Q. In your view, does that job require attention to detail?

A. Yes.

Q. Do you consider yourself a detail-oriented person?

A. Yes.

Q. Let me show you a map that's been designated and I believe admitted as D1732.

Have you seen this before?

A. Yes.

THE COURTROOM DEPUTY: That has not been admitted.

MR. NEUREITER: It's not been admitted?

It has not been admitted. Permission to approach, your Honor.

MR. MACKEY: We have no objection to its admission.

Estella Weigel - Direct

THE COURT: All right. Now it is. D1732.

BY MR. NEUREITER:

Q. You've seen this before?

A. Yes.

Q. Is that a map of central Kansas?

A. Yes.

Q. Is there a way that you could describe for the jury both where you live and where you work looking at this map? And if you talk me through it, I'll walk through it with the pen.

MR. TIGAR: Your Honor, the screen there by the jurors

does not show the --

THE COURT: Thank you.

MR. TIGAR: There we go.

MR. NEUREITER: Now we're set.

THE COURT: Thank you.

THE WITNESS: I live in Salina, which is an intersection between -- well, a junction between Interstate 135 and Interstate 70.

BY MR. NEUREITER:

Q. Is this where Salina is on this map?

A. Yes.

Q. And is that I-70?

A. Yes.

Q. And the road going vertically north and south is?

A. 135.

Estella Weigel - Direct

Q. And where do you work?

A. I work at Newton. And it's by the junction of Interstate 135 and Highway 50.

Q. Is this Highway 50 down here?

A. Yes.

Q. And is this 135?

A. Yes.

Q. And if I put the pen right there, does that accurately indicate where Newton is?

A. Yes.

Q. So what kind of a commute do you have each morning?

A. It's about a 60-mile commute.

Q. It's a long drive?

A. Yes.

Q. What time do you get up in the morning to go to work?

A. I usually get up -- I leave by 7:00, so I usually get up by 5:30.

Q. Okay. I want to take you back to the Easter time period, 1995. Did you have plans that Easter?

A. Yes. I went home to my parents' house which is in Victoria, Kansas. And we celebrated my sister's birthday.

Q. And did you go to work on Monday, the day after Easter, 1995?

A. Yes.

Q. Did you go to work on Tuesday?

Estella Weigel - Direct

A. Yes.

Q. I didn't ask you, but what route do you take when you drive to work?

A. I take Interstate 135.

Q. Do you take it down from Salina to Newton?

A. Yes.

Q. Did you see something unusual on your drive to work Tuesday after Easter, 1995?

A. Yes.

Q. Okay. Tell the jury what you saw.

A. Okay. It was real shortly after McPherson. I came upon a slow-moving Ryder -- yellow Ryder truck, and in front of that truck was a car without a license plate. There were two occupants in the yellow Ryder truck and one occupant in the car.

Q. What kind of car, if you recall, was it that you saw without a license plate on that day?

A. It reminded me of my sister's '78 Mercury.

Q. And what color was it?

A. Beige.

Q. And you're on the interstate, you told us. How fast do people usually travel on the interstate?

A. At that time it was about 65 miles per hour, and they've raised it now.

Q. Was there something about the speed of automobile -- of the

Estella Weigel - Direct

vehicles that you passed that caused you to notice them?

A. Yes. They were moving very slowly, around 40 miles per hour. There was also road construction that was beginning in that area, and that is why I thought they were moving very slowly was because of the contents of the Ryder truck.

Q. You came up behind them as you're driving south on I-35. Describe for the jury -- stop action by stop action -- what happened precisely as you passed the Ryder truck and the yellow -- excuse me, I said yellow -- beige Mercury.

A. As I mentioned, road construction was beginning, and so the road constructor workers were putting up the yellow construction barrels. And I was coming upon the slow-moving vehicle, and I was trying my best to judge the distance between the point of where I could go and pass them. And as I was -- I was behind them for a short period of time, and I finally was able to pass them.

And as I was passing those two vehicles, I . . . I glanced -- as I was passing, I glanced on -- at the driver of the Ryder truck; and I also was using my rearview mirror and my side mirror as I was going, passing those two vehicles. There was not enough room between the car and the truck for me to go in between and pass the car, so I basically ended up passing the car.

When I noticed that there was no license plate on the car, I looked to see if there was a temporary license, one of

Estella Weigel - Direct

those paper things, and I didn't see anything.

Q. Now, you said you looked at the driver of the Ryder truck and you glanced at him. Did you get a look at the driver of the car?

A. Yes. Yes.

Q. And tell us your recollection of, to the best of your ability here, a couple years after the fact, what the driver of the car looked like.

A. It looks similar to the sketch that came out of John Doe No. 2.

Q. Were you able to see -- you see Mr. Nichols here; right?

A. Yeah.

Q. Does that look like the driver of the Ryder truck to you?

A. No.

Q. Were you able to see the passenger of the Ryder truck?

A. Not very well. No.

Q. So you couldn't tell whether Mr. Nichols was the passenger, or not?

A. No.

Q. Did there come a time when you contacted -- or did there come a time when the FBI was informed of what you had seen?

A. Yes.

Q. Tell us how that came about.

A. What happened was I -- after I had seen the sketches on the TV, I went to my supervisor at work and told my -- I was

Estella Weigel - Direct

struggling to determine if I had information that might help with the Oklahoma City bombing.

He knew the police chief of Newton and said he would talk with him. He did talk with the police chief of Newton, and the police chief of Newton told my boss that he thought it was significant information.

He gave me a number for the FBI, and I tried that number, and I got no answer. It was a while before I was able to get an answer.

So I went ahead and looked up the phone number of the Wichita FBI building office in Wichita. And I finally got an answer, and I was told at that time the reason I didn't have -- didn't get an answer with the number that I was given by the Newton police chief was because they were transferring from building -- from one building.

Q. In any event, you did tell the FBI what you had seen?

A. Yes.

Q. Did you contact any newspapers or publicity to try and --

A. No, 'cause I didn't want to get involved.

MR. NEUREITER: Thank you very much for speaking with us today.

Pass the witness.

THE COURT: Mr. Ryan.

CROSS-EXAMINATION

BY MR. RYAN:

Estella Weigel - Cross

Q. Good afternoon.

A. Good afternoon.

Q. My name is Pat Ryan. We haven't met, have we?

A. No.

Q. Are you a little nervous?

A. Yes.

Q. Well, there's some water there and some glasses you can't see on the other side of that pitcher, if you'd care for a drink of water.

Now, the date that you saw this Ryder truck did you tell us was the 18th of --

A. 1995. It was a Tuesday.

Q. April 18, Tuesday, the day before the bombing?

A. Yes.

Q. Is that correct?

A. Uh-huh.

Q. And you had -- at the time that you talked to the FBI, you were trying to be helpful?

A. Uh-huh.

Q. Is that correct?

A. Uh-huh.

Q. Wanted them to know what information you had seen?

A. Yes.

Q. You didn't know whether it was significant or not, or even if it was the same people that were involved in the bombing, or

Estella Weigel - Cross

not?

A. Right.

Q. But you were concerned enough that you wanted to let the FBI know what you had learned, what you had seen?

A. Yes.

Q. And they sent an agent out to talk to you; is that right?

A. No.

Q. It was on the telephone?

A. Yes.

Q. In any event, during that conversation, you relayed to the agent your best recollection of what you had seen?

A. Yes.

Q. Does the date May 2 sound about right; that would be about two weeks after the bombing?

A. I know that is the date of the report the Agent Nolan filed, yes.

Q. Does that sound about right to you?

A. I spoke with him on the 27th of April.

Q. You spoke with him on the 27th of April, all right. So you spoke to him about eight days after the bombing?

A. Yes.

Q. Now, did you keep a note of this? Do you have notes of your conversation?

A. No.

Q. Excuse me?

Estella Weigel - Cross

A. No.

Q. And at the time that you talked to him on the 27th, you had seen and read, I assume, media reports about the Oklahoma City bombing?

A. Yes.

Q. Is that correct? And you had been familiar with the fact that a Mercury had been driven by Timothy McVeigh, I take it? You knew that?

A. I guess I don't understand your question.

Q. My question is at the time you talked to the FBI eight days after the bombing, at that time had you seen media reports stating that Mr. McVeigh was associated with a 1978 Mercury automobile?

A. No, I did not know that.

Q. Did you tell the Agent Nolan that you had seen the Mercury on TV?

A. Yes.

Q. So you had seen the Mercury? Prior to the time that you talked to the FBI, you had seen that on television?

A. Yes. I had seen that on television. I had seen that on television.

A. Okay. It had to be that Friday or Monday. After the bombing.

Q. All right. I'm not trying to confuse you now. So let's just take it slow. My question is simply: At the time that you spoke to the FBI agent on April 27, prior to that you had seen reports in the media of Mr. McVeigh's Mercury automobile?

Estella Weigel - Cross

A. Yes.

Q. Is that correct?

A. Yes.

Q. All right. And you knew that a Ryder truck was reportedly the vehicle in which the bomb was delivered?

A. Yes.

Q. You knew that as well?

A. Uh-huh.

Q. And did you know that the truck was at least reported to have been rented in Kansas?

A. I -- that's -- yes.

Q. And you'd seen these sketches of Un. Sub. 1 and 2 in the newspapers or on television?

A. You mean the suspects?

Q. Yes.

A. Yes.

Q. Excuse me. I apologize. We're kind of used to that vernacular. The sketches of John Doe 1 and 2, you'd seen those on television?

A. Yes.

Q. And had you also seen in the media that the Mercury that Mr. McVeigh was arrested in was reportedly seen without a tag at the time of his arrest?

A. Yes. And that's the reason why I'm going "This is the car and this is the truck." And that is when I decided to -- I was

Estella Weigel - Cross

struggling to determine if I needed to give this information to the FBI.

Q. And you had -- did you also know that Mr. McVeigh reportedly had a gun on him at the time he was arrested?

A. I believe it was a weapon, yes.

Q. Right. You didn't know what kind, you just knew it was a firearm?

A. Yes.

Q. And so everything that you had seen or heard in the media you saw that morning of the 18th; correct?

A. Yes.

MR. NEUREITER: Objection, your Honor.

BY MR. RYAN:

Q. You saw --

MR. NEUREITER: I'm not sure there's been any testimony about Mr. McVeigh, the person she saw, having a weapon.

THE COURT: Well, the objection is overruled.

THE COURT: Well, the objection is overruled.

BY MR. RYAN:

Q. On the date of the 18th, you saw the Ryder; correct?

A. Uh-huh.

Q. And you'd earlier heard about that on the media?

A. Uh-huh.

Q. You saw the Mercury? You'd earlier heard about that on the media?

Estella Weigel - Cross

A. Uh-huh.

Q. You saw no tag on the Mercury? You'd earlier heard about that on the media; is that correct?

A. Uh-huh.

Q. You saw this person who resembled John Doe 2? You'd heard about that on the media; right?

A. Uh-huh.

Q. And you saw a firearm that day, didn't you?

A. Yes.

Q. In one of the vehicles?

A. Yes.

Q. And you'd heard about that on the media?

A. Yes.

Q. Now -- did you give any details to the agent about what this person driving the Mercury looked like?

A. I said it resembled the sketch of John Doe No. 2.

Q. I understand you said it resembled the sketch; but did you tell the agent what it was that you saw, what the person looked like?

A. No, I did not tell the agent.

Q. Do you have a recollection of that?

A. Yes, I do.

Q. And did you see the sketch yesterday?

A. No.

Q. Have you seen the sketch since you've been here in Denver?

Estella Weigel - Cross

A. No.

Q. Could you tell us how much the person weighed?

A. No.

Q. Or how tall he was?

A. That would be kind of difficult.

Q. Do you recall the length of his hair?

A. Yes. It was right above the ear, and the length was about right below the earlobe.

Q. Did he have a ball cap on?

A. Yes. It was turned backwards.

Q. And did you see the color of the ball cap?

A. I don't recall.

Q. And you previously to this day had seen John Doe 2 photograph with a ball cap on backwards, I take it?

A. Yeah. At the time of the . . .

Q. Now, was the time that you saw this event on the interstate

on the 18th of April -- was that about 7:45 in the morning?

A. Yes.

Q. Now, you know where Junction City is; correct?

A. Yes.

Q. And are you familiar with the McDonald's in Junction City at I-70 and Washington Street?

A. No.

Q. Well, let me ask it this way: Could a person who was at McDonald's at 7:30 in the morning on the 18th travel to where

Estella Weigel - Cross

you saw this event by 7:45?

MR. NEUREITER: Objection.

THE COURT: Well, if you know the answer to that, you can answer it.

THE WITNESS: I don't know it.

THE COURT: All right.

BY MR. RYAN:

Q. Do you know the distance between Junction City and where you were?

A. I know the distance between Salina and Junction City is about an hour's drive, and the distance between Salina and McPherson is about a half hour's drive.

Q. So how far does that make you from Junction City?

MR. NEUREITER: Again, your Honor, as the crow flies, it's not clear.

THE COURT: If that's an objection, it's overruled.

BY MR. RYAN:

Q. How far from Junction City was it to where you saw these vehicles? Approximately. I'm not asking for a specific mile. Just approximate.

A. I guess 90 sounds good.

Q. About 90 miles?

A. Yeah.

Q. It would be at least an hour, maybe an hour and a half from Junction City to where you saw these vehicles?

Estella Weigel - Cross

A. Yes.

Q. Is that right?

A. Uh-huh.

Q. So you know it would not be possible to get from Junction City to where you saw these vehicles in the length of time from 7:30 to 7:45; is that fair?

A. Yes.

MR. RYAN: No further questions. Thank you for answering my questions.

THE COURT: Any redirect?

MR. NEUREITER: A moment, your Honor.

No more questions, your Honor.

Thank you, Miss Weigel.

THE COURT: You may -- I take it she's excused.

MR. NEUREITER: Yes, your Honor.

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

Next, please.

MR. WOODS: Yes, your Honor. Rose Mary Zinn.

THE COURT: Miss Zinn.

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

(Rose Mary Zinn 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: Okay. It's Rose Mary Zinn, Z-I-N-N.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. NEUREITER:

Q. Miss Zinn, how are you?

A. Nervous.

Q. We met for the first time a couple days ago; is that right?

A. Right.

Q. Where are you from, Miss Zinn?

A. Lost Springs, Kansas.

Q. Are you married?

A. Yes.

Q. Do you have children?

A. Yes. Four.

Q. Four children?

A. Five grandchildren.

Q. What do you do for a living presently, Miss Zinn?

A. School bus driver.

Q. What have you done in the past?

A. I've been a clerk, waitress, fry cook.

Q. I want you to think back to the April of 1995 time period and tell us what you were doing then.

A. I was working at Tie Meiers. It's a grocery store in Lincolnville.

Q. I'm going to show you a map that's been previously admitted

Rose Zinn - Direct

as D1732. Have you seen that map before?

A. Yes. Do you want to know where Lincolnville is?

Q. I'd like you to tell us where Lincolnville is.

A. It's right in between Herington and Marion. It's exactly 12 miles from Marion and 12 miles from Herington.

Q. So it would be around where the pen is?

A. Yes.

Q. And what is the road that connects Marion and Herington?

A. 77.

Q. Now, is Lincolnville right on 77?

A. Well, it's just to the side, but . . .

Q. How much to the side?

A. It's right there. It's sitting there.

Q. Is your store right on 77, the Tie Meiers store?

A. No.

Q. Where is that located?

A. It's about a -- let's see. About two blocks from 77

A. It's about a [REDACTED] I'd see. About two blocks from 77.
West.

Q. What were your working hours when you were there in April, 1995? What were the working hours?

A. 8 in the morning to 5:30 in the afternoon.

Q. Did something happen that you remember the day after Easter, 1995?

A. Yeah.

Q. Can you tell the jury about that.

Rose Zinn - Direct

A. Okay. Well, my boss just went to lunch, and I was there by myself, and these two guys came in the front door. And in Lincolnville, you always know strangers 'cause there's no strangers.

Q. How big is Lincolnville?

A. Oh, it's probably got maybe 200.

Q. 200 people?

A. That's probably exaggerating.

Q. Including cats and dogs?

A. Well, yeah.

Q. So you were there, a couple people came in?

A. Yeah, these two guys. One was blond and white, and the other one was a dark-complected guy.

Q. Can you describe the facial features of the two men?

A. Not --

Q. Any more than you just have?

A. No.

Q. Okay. Did it cause you some concern to have two people come in that you hadn't seen before?

A. Yeah. Well, the dark-colored guy looked mean. So I know this might sound silly, but I thought, uh-oh, I'm going to be robbed.

Q. Is that why you remember that event?

A. Yep.

Q. Did they buy anything?

Rose Zinn - Direct

A. Yeah.

Q. What did they buy?

A. Well, I think they bought cigarettes and pop. I know they bought pop, but I'm not sure on the cigarettes.

Q. After they made their purchases, what did they do?

A. They just -- they left.

Q. And what did you do?

A. I went up to the front of the store to see where they was going, and they got in a Ryder truck.

Q. Did you follow them out to see what vehicle they were getting in?

A. Yeah. Well, they -- the front's all window, and that truck was setting right there in front. It was facing west. It wasn't parked diagonal.

Q. Can you describe the truck a little bit, best you recall?

A. Yeah. Well, I'd say it would hold -- well, now, when we moved, we used U-Hauls. We could get five rooms of furniture in it. But it was probably about three-room.

Q. Three-room Ryder truck?

A. Yeah. It was just square, no overhang, no . . .

Q. Did it have a van front or a truck front?

A. Truck front.

Q. Truck front. I'm going to show you a brochure --

MR. NEUREITER: Actually, one moment, your Honor.

BY MR. NEUREITER:

Rose Zinn - Direct

Q. Soon we will show you a brochure --

A. Okay.

Q. -- with a number of Ryder trucks. We'll ask you to pick out the one that you think best matches.

I'm going to show you a black-and-white copy of what has previously been admitted as D1737.

A. It would be the third one from the top.

Q. And you say -- we found it. Now I'm going to show you a color copy of the same thing previously admitted as D1737.

A. Still the third one.

Q. And it will be the third one from the top?

A. Yeah.

Q. And if I zoom in, can you tell me how many bedrooms that particular truck will hold?

A. That says three.

Q. Okay. Now, to the best of your recollection, how tall were the two individuals who came in?

A. See, I'm not good with guessing heights, but the dark guy was pretty tall and the white guy wasn't. He wasn't real tall.

Q. So that's the best of your recollection?

A. Yeah.

Q. But you're not very good at guessing heights?

A. No. I couldn't even guess your height. You're tall.

MR. NEUREITER: I thank you for coming in today.

THE WITNESS: Yeah.

MR. NEUREITER: And I think I pass the witness, your

Honor.

THE COURT: All right. Mr. Ryan.

CROSS-EXAMINATION

BY MR. RYAN:

Q. Good afternoon, Miss Zinn.

A. Good afternoon.

Q. How are you?

A. Fine. Better.

Q. Mrs. Zinn, when you -- after the Oklahoma City bombing, you knew that Ryder truck was associated with that, you read that in the paper?

A. I saw it on TV.

Q. Right. And because you had seen a Ryder truck around the time of the bombing, you called in to the FBI to give them your information?

A. Well, I didn't call FBI.

Q. How did they get in touch with you?

A. My boss -- she lived in -- she lives in Nebraska, and she come down; and I was telling her about it, and she went to the phone and called them.

Q. Was that with your permission?

A. Yeah.

Q. Okay. And you recall this event and recall telling it to the FBI around May 11; does that sound about right?

Rose Zinn - Cross

A. I couldn't tell you. I don't remember when I --

Q. Couple --

A. It was a little bit after the bombing.

Q. Couple weeks after the bombing?

A. Yeah.

Q. All right. And do you recall telling the special agent -- was it by telephone?

A. No, he came to the store.

Q. Was this James Keely or Kiely?

A. Could have been.

Q. Do you remember telling this FBI agent that the white gentleman that you saw was about 5' 7"?

A. No. Really, after I got -- talked to -- the FBI said that. 'Cause I told him, the manager there at the store, that was -- he was about that height, and he put down 5' 7".

Q. I'm sorry, I didn't understand what you just said.

A. The FBI agent put down 5' 7". I didn't say he was 5' 7".

Q. Did you not just say yesterday that the man was 5' 7"?

A. Yeah. Well, I told you that. Then I got to thinking that I had told the FBI agent that my boss was about the height, and the FBI agent wrote down 5' 7".

Q. How tall is your husband?

A. He's probably about 5' 10".

Q. And this -- the white man that you saw was a good deal shorter than your husband; fair?

Rose Zinn - Cross

A. Well, he was shorter.

Q. Shorter than 5' 10"?

A. Yeah.

Q. And the darker man who was with him was taller than the white man?

A. Right.

MR. RYAN: I believe that's all I have, your Honor.

Thank you.

THE COURT: Anything else of this witness?

MR. NEUREITER: I don't believe so, your Honor.

THE COURT: All right. I take it she's excused, then.

MR. NEUREITER: Yes, your Honor.

THE COURT: You may step down. You are excused.

Next, please.

MR. WOODS: Yes, your Honor. Donnell McCalah

MR. WOODS: yes, your honor. Darrell McCaleb.

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

(Darrell McCaleb 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: Darrell McCaleb, M-C-C-A-L-E-B.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. NEUREITER:

Darrell McCaleb - Direct

Q. Hello, Mr. McCaleb. How are you?

A. Hello.

Q. We met for the first time a couple of days ago?

A. Uh-huh.

Q. Where are you from, Mr. McCaleb?

A. Junction City.

Q. Where did you grow up?

A. I grew up in Dwight, Kansas.

Q. How old are you?

A. 43.

Q. What is your line of work?

A. Electrical contractor. Electrician.

Q. Do you have experience with DRMO at Fort Riley, Kansas?

A. Yes.

Q. Why do you have that experience?

A. We oftentimes go out, we look for items for the business.

Q. How often do you go out?

A. I try to go every month.

Q. How long have you been going out every month?

A. I've been probably three years -- two-and-a-half, three years now.

Q. Do you recall attending a viewing session at the DRMO on the 18th of April, 1995?

A. Yes.

MR. NEUREITER: I'd like to show the witness an

Darrell McCaleb - Direct

exhibit, your Honor.

THE COURT: Yes.

MR. NEUREITER: Show the witness Government 1956.

BY MR. NEUREITER:

Q. Have you seen that before?

A. Yes, I have.

THE COURT: Well, you can't have this little private conversation.

MR. NEUREITER: I'm sorry.

BY MR. NEUREITER:

Q. Do you recognize that document?

A. Yes, I do.

O. I'm displaying now what has been previously marked and

admitted, I believe, as G -- Government Exhibit 1956. Can you tell us what this document is?

A. It's a sign-in sheet.

Q. Sign-in sheet for what?

A. For the DRMO inspections. Sales.

Q. You previously identified your signature on this document.

A. Not on this one. But, yes, I have.

Q. Well, let me turn -- I'm turning to the second page, third page, fourth page, fifth page. I'm zooming in. What do you see there, sir?

A. That's my signature.

Q. Does that indicate that you signed in at the DRMO --

Darrell McCaleb - Direct

A. Yes.

Q. -- on 4-18, 1995?

A. Yes.

Q. Look over at the -- is this the time that you would have signed in --

A. Yes, it is.

Q. -- to your knowledge?

What does it say down at the bottom for when you signed in?

A. I believe 10:50.

Q. Let me move over. There's your name.

A. 10:50.

Q. 10:50. And what is your practice when you go to the DRMO, sir, in terms of viewing items?

A. Well, I try to go by the way they're listed in the catalogue.

Q. On this particular date, did you notice that the person -- tell us what you noticed about the person who sometimes mans the sign-in desk?

A. They left their post. They left the sign-in desk.

Q. Why did you remember that?

A. Well, I thought it was kind of strange, 'cause they usually have somebody there for the items that they have by the sign-in desk.

Q. While you were there, did you notice that the person left

Darrell McCaleb - Direct

their post?

A. Yes.

Q. And have you observed that -- excuse me. You have been there how many times, would you say, in the last three years?

A. I'd say 15 or 20. Probably 15.

Q. And have you observed that on a number of occasions?

A. Yes, I have.

Q. So in your experience, is the person at the sign-in desk always there?

A. Not always.

Q. And on this particular occasion, did you notice people

entering the DRMO without signing in?

A. Don't recall that.

Q. Do you recall talking to the FBI on 6-17, 1995?

A. Yes.

MR. NEUREITER: And I'd like to refresh his recollection, your Honor.

THE COURT: You may show it to him.

MR. NEUREITER: I'm asking the witness to look at the last paragraph.

THE WITNESS: Okay.

BY MR. NEUREITER:

Q. Having seen that, does that refresh your recollection that on 6-18, 1995, a lot of people arrived during this period and walked into the sale without signing the log?

Darrell McCaleb - Direct

A. Yes.

MR. GOELMAN: I'm going to object to Counsel reading from the document.

THE COURT: He asked a question. The objection was overruled.

What was your answer?

THE WITNESS: Repeat the question, please.

BY MR. NEUREITER:

Q. Having looked at this document, does that refresh your recollection that on this date, 4-18, 1995, you noticed a lot of people arrive during this period and walked into the sale without signing the log?

A. If that's what I said, yes.

THE COURT: Well, no, that isn't. The question is whether you remember that. Not what you read here. Do you remember that, from that day?

THE WITNESS: No, I really don't remember that.

BY MR. NEUREITER:

Q. You do remember that the person was not at the desk, though?

A. Yes, I do.

Q. Mr. McCaleb, is there a place where someone can get a soda or a candy bar there at the DRMO?

A. I believe there is, yes.

Q. And where is that location?

Darrell McCaleb - Direct

A. I'd say in the northeast corner of the building.

Q. Would it help you if I showed you a map of the DRMO area?

A. Yes, it would.

Q. I'm going to show you a document that I do not believe has been admitted into evidence. It's marked for identification as D172.

I'm not going to show it to the jury. Have you seen this before?

A. Yes, I have.

Q. And does that fairly and accurately represent the layout of the DRMO and in the salvage storage area?

A. Yes, it does.

MR. NEUREITER: Move the admission of D172, your Honor.

MR. GOELMAN: No objection.

THE COURT: Received. D172.

MR. NEUREITER: If I could ask the marshal for the -- admission (sic) to publish, your Honor.

THE COURT: You want to put it on the easel?

MR. NEUREITER: Yes, your Honor.

BY MR. NEUREITER:

Q. If you could describe --

THE COURT: All right.

MR. NEUREITER: Your Honor, if it would be easier, if I could question --

Darrell McCaleb - Direct

THE COURT: I think it works better if you put it at the end of the jury box here --

MR. NEUREITER: Very well.

THE COURT: -- as we have other exhibits.

BY MR. NEUREITER:

Q. Can you see that, Mr. McCaleb?

A. Yes.

Q. Mr. McCaleb, D172, you've just described as a map of the DRMO area. What is the big, shaded rectangle there?

A. That's the building that contains the offices and the -- some of the items for sale.

MR. NEUREITER: Okay. If the witness, your Honor, could have a microphone, I think it would be easier for him to get down and demonstrate.

THE COURT: All right.

MR. NEUREITER: Thank you.

BY MR. NEUREITER:

Q. Okay. If you could step down.

There's an area on that document that's marked "salvage storage." Could you explain to the jury what that is.

A. This is the area where they have outside items for viewing.

Q. And is there a gate by which customers access that area?

A. Yes. Right there.

Q. Is there a sign-in desk at that gate?

A. No, there is not.

Darrell McCaleb - Direct

Q. If you're interested in outside items, are you required to sign in before going through that gate?

A. No. Before you go to that gate, no.

Q. Now, we were talking before about the big rectangle.

Explain the various doors that you are aware of that allow entry into that big rectangle and tell us what the rectangle is, please.

A. This is the building -- contains the offices plus the items

A. This is the building contains the offices plus the rooms for inside viewing.

Q. Where would the doors be if you were going to sign in to look at items on the inside?

A. Normally, they got a door to each one of these; and it's usually at one of those doors.

Q. Now, is there a door facing out onto the salvage storage area, the outside area?

A. Yes, there is.

Q. And what does that door lead to?

A. It leads to a big room with tables.

Q. And are there soda machines in that room?

A. I believe so, yes.

Q. Is there a candy machine in that room?

A. I believe so.

Q. Can you wait in that room if the weather's bad?

A. Yes, you can.

Q. Will they kick you out of there?

Darrell McCaleb - Direct

A. No, I don't believe so.

Q. If -- is that door immediately accessible from the outside area? In other words, do you have to go into the building by another entrance, or can you get into that room from the outside area?

A. You can get in from the outside.

MR. NEUREITER: Thank you, you can have a seat now.

Pass the witness, your Honor.

Do you want the exhibit up?

If I may retrieve the exhibit, your Honor.

THE COURT: All right.

Mr. Goelman.

MR. GOELMAN: Thank you.

CROSS-EXAMINATION

BY MR. GOELMAN:

Q. Good afternoon, Mr. McCaleb.

A. Hi.

Q. You said that one of the reasons you remembered that no one was at the sign-in desk was that it was unusual; is that right?

A. I thought it was unusual, yes.

Q. And the reason for that is that the overwhelming majority of the time there is someone at the sign-in desk, isn't there?

A. Yes.

Q. In fact, you've been to DRMO most months for the last several years; isn't that right?

Darrell McCaleb - Cross

A. Yes.

Q. Each time you went to DRMO, you signed in, didn't you?

A. That's correct.

Q. Each time you went to DRMO, there was someone at the sign-in desk?

A. Yes, there was.

Q. Each time you went to DRMO, after you parked, you immediately signed in; isn't that right?

A. Yes, I did.

Q. Did you ever spend six hours wandering around the yard before you signed in?

A. No.

Q. Each time you went to DRMO, sir, you spent less than an hour total, both inside and outside; isn't that right?

A. Yes.

Q. Defense counsel showed you a diagram -- I believe it was defense 172 -- of a map of the DRMO; is that right?

Now, is that entire area labeled "salvage" on that map open to customers on viewing days?

A. Yes, I believe it is.

Q. Is that area divided up based on which particular section is for sale on viewing days?

A. They usually have it divided, yes.

Q. In fact, you've gone into an area where there were items that were not for sale before, have you not?

Darrell McCaleb - Cross

A. Yes, I have.

Q. And within a minute or two, you were instructed to go to the area where the sale items were; isn't that right?

A. Yes.

Q. And who instructed you to do that?

A. One of the employees.

Q. One of the DRMO employees, sir?

A. Yes.

Q. You testified that there -- you have seen the sign-in table where there was not someone sitting right there; is that right?

A. Yes.

Q. And you noticed this because you were already in the warehouse and you'd look up and there was nobody sitting behind the table; is that right?

A. Yes.

Q. That doesn't necessarily mean that there weren't any employees in the area, in the warehouse itself, does it, sir?

A. No, it doesn't mean that.

Q. And the DRMO employees: They don't wear uniforms, to your knowledge, do they, sir?

A. No.

Q. You're not familiar with the identity of all the DRMO employees?

A. No, I'm not.

Q. And sitting here today, you don't remember ever seeing

Darrell McCaleb - Cross

anyone walk in without signing in, do you, sir?

A. No, I don't.

Q. Sir, do you still have the sign-in log up there?

A. No, I don't.

MR. GOELMAN: May I approach, your Honor?

THE COURT: Yes.

BY MR. GOELMAN:

Q. Could you turn to -- I think it was the third page, where you signed in.

A. I believe it was the back of the third page, the last entry.

A. It's farther down than that.

Sixth page.

Q. Sixth page?

A. Yes.

Q. And what time does your sign-in indicate, sir?

A. 10:50.

Q. Now, is that approximately the right time that you recall from your independent recollection of signing in on April 18, 1995?

A. Yes, it is.

Q. Do you remember what the weather was like that day?

A. No, I do not.

Q. Do you remember what the size of the sale was, sir?

A. No. I don't remember that particular size, no.

Darrell McCaleb - Cross

Q. Now, you first heard of the bombing in Oklahoma City on April 19, is that right?

A. Yes, I did.

Q. And shortly thereafter, the FBI came out to talk to you?

A. Yes.

Q. Did they tell you how they found you, sir?

A. Uh-huh. Yes, they did.

Q. And was that through the sign-in sheet?

A. Yes.

Q. If you could, could you count the number of entries on the sheet? There should be nine. Just tell me if I'm right that there are nine entries on each sheet.

A. Yes, there is.

Q. And could you turn now, sir, to the 93d entry. I think it's the eighth page, and it's at 12:50 sign-in.

A. Okay.

Q. That indicates, does it not, a sign-in of someone using the name "Terry Nichols" at 12:50 p.m.? It's about halfway down the page, I think, the third entry on that page?

A. Yes, it does.

Q. And that's a full two hours after you signed in?

A. Yes, it is.

Q. Now, the time the FBI came out to see you, you had already seen Terry Nichols' picture on television; is that right?

A. Yes.

Darrell McCaleb - Cross

Q. And they asked you, did they not, if you had seen Mr. Nichols at the April 18, 1995, sale at DRMO?

A. Yes, they did.

A. Yes, they did.

Q. You told them you didn't remember seeing Mr. Nichols there; isn't that right?

A. That's correct.

Q. And you, Mr. McCaleb, went to both the inside and the outside area; isn't that right?

A. Yes.

Q. Now, Defense Counsel asked you about a room where there's a Coke machine; and there's also vending machine for snacks.

What kind of snacks are in that vending machine?

A. Couldn't tell you. I've never used it.

Q. There's no coffee shop at the DRMO, is there?

A. Not that I'm aware of.

Q. Have you ever been at the DRMO without a vehicle for six hours, sir?

A. No, I haven't.

Q. Have you ever been at the DRMO without a vehicle at all?

A. No, I have not.

Q. Have you ever seen people just sitting in that room drinking Cokes and eating potato chips for six hours?

A. No, I have not.

Q. You don't know, do you, sir, where Terry Nichols was from 8 a.m. to 12:50 p.m. on April 18, 1995?

MR. NEUREITER: Objection.

THE COURT: Sustained, objection.

MR. GOELMAN: I have nothing further.

THE COURT: Any redirect?

MR. NEUREITER: No, your Honor.

Thank you, Mr. McCaleb.

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

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. WOODS: Yes, your Honor. Robert O'Connell.

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

(Robert O'Connell 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: Robert Hugh O'Connell. O apostrophe C-O-N-N-E-L-L.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. NEUREITER:

Q. Hello, Mr. O'Connell. How are you today, sir?

A. Okay.

Q. Where are you from, Mr. O'Connell?

A. I live in Jewell, Kansas.

Robert O'Connell - Direct

MR. NEUREITER: Hold on one moment.

If I may approach one moment, a matter with respect to this witness.

THE COURT: All right.

(At the bench:)

(Bench Conference 104B1 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

Robert O'Connell - Direct

(In open court:)

THE COURT: Proceed.

BY MR. NEUREITER:

Q. Mr. O'Connell, where are you from?

A. Jewell, Kansas.

Q. Where is Jewell, Kansas?

A. North and west of Salina, Kansas, about 60 miles west, further west of Junction City.

Q. What do you do for a living, sir?

A. I'm a registered nurse.

Q. And what have you done in the past?

A. I owned a Radio Shack for a number of years. I've been in the military. That's pretty much it.

Q. When did you get your nursing degree?

A. In '94.

Q. And since that time, have you been a practicing registered nurse?

A. I've practiced as a registered nurse; that's correct.

Q. Do you attend the DRMO at Fort Riley on occasion?

A. Yes, I have.

Q. And what is the basis of your interest in the DRMO?

A. When I went and requested the catalogues be sent to my home, I was considering getting back into an electronics service business.

Q. How many times would you say you've attended the DRMO?

Robert O'Connell - Direct

A. Probably eight to ten times.

Q. Do you recall attending the DRMO on April 18, 1995?

A. Yes.

Q. I'm going to show you an exhibit marked G19 -- Government Exhibit 1956, and the second-to-last page of that.

A. Okay.

Q. Do you recognize that document?

A. Yeah, the sign-in sheet.

Q. And if I zoom in?

A. That's my name and is my signature.

Q. And what time does it say that you signed in?

A. 1434, I would say is what that says. Which would be 2:34 in the afternoon.

Q. Mr. O'Connell, do you have a particular interest in the different areas at the DRMO?

A. When I was going to DRMO, I was looking, as I mentioned, for electronic test equipment. The other areas that I looked at -- I looked for tentage, GP medium, GP small army tents. I looked over some of the canisters that they put the rebuilt diesel engines in. And I paid some attention to some of the -- they're called 880's, they're a Dodge pickup truck that was used by the National Guard for a number of years.

Q. Are those latter items that you talked about located in the inside area, or the outside area of the DRMO?

A. The 880's, the 10-inch definitely on the outside. The

Robert O'Connell - Direct

canisters for the motors are also on the outside.

Q. What was your practice from the eight to ten times that you visited the DRMO in terms of which area you would visit first?

A. Generally when I got there on an inspection day -- and understand, I didn't go there just to go and inspect stuff; I was usually doing something else -- I would get there, park in the parking lot across from the gate entrance, and go directly to the outside area. The only opportunity I had to go inside -- or the only times I went inside was if there was something inside that I wanted to look at.

Q. Were there occasions that you attended the DRMO when you didn't sign in at all?

A. Yeah, that's correct.

Q. And why was that?

A. Because I never went into the inside.

Q. So is it your testimony that if you go into the outside area, there would be no record of your being there?

A. That's correct.

Q. Do you recall this specific sale date?

A. I have a lot of difficulty recalling the exact date. Being able to look at the sign-in sheet helped me recall the date. I have very vivid memories of certain parts of that sale. A lot of that day is foggy to me at best as far as exact times and incidents. I have a kind of a recollection of the overall day.

Q. It was a long time ago?

Robert O'Connell - Direct

A. Yeah.

Q. Will you please state the date of the sale of the equipment?

Q. Tell me a little bit about your practice in terms of looking at items in the outside area, in terms of what aisles you would go down, what you would look at.

A. Well, in the outside area, they have aisles laid back and forth. They have lot numbers laid out on those aisles. My general -- if I was going, for example, to look at tentage, I would walk down the aisle till I saw a tent that I wanted to look at. I would quickly open it up, look through it. If I was -- if I saw something that really struck my eye, a tent that look good for example, I might spend some other time, unfolding the cover, looking at the center-pole areas of the tent that are most likely to rip and be the faulty area of the tent.

Q. Were you pretty meticulous in inspecting the things that you were interested in buying?

A. Not overall. No. It was pretty quick.

Q. Are there certain aisles that are for sale on a particular sale and other aisles that are not for sale on a particular sale?

A. My understanding -- and this is my understanding before I talked to anyone up here -- was that if an item was for sale, it had a lot number on it. The aisles that I went down generally had lot numbers. However, it was not unusual, like when I go back to look at if they have military vehicles on a

Robert O'Connell - Direct

lot of the sales, to walk past the other lots; if there was something that caught my eye, go over and look at it.

Q. Have you in your eight to ten times visiting the DRMO gone down aisles quite frequently where you were looking at items and they weren't for sale that particular day?

A. That's correct. Items that did not have lot numbers on them, yeah. Because you knew that was coming up on a sale.

Q. And was that of interest to you to see what was coming up on a future sale?

A. Lot of times, yes.

Q. And how many of the eight to ten times that you've been to the DRMO did you go and look at items that were coming up on future sales?

A. I would . . . to be very honest, I would say probably every time, because it was my routine or my habit to always go back and look and see what they had in the military vehicles; and usually as I came back from that area, I would walk down -- I generally passed the lot-number items on my way out, came past the other things just to see what was there.

Q. And of those eight to ten times that you've done that, how many times did somebody confront you and tell you you weren't in the right area?

A. Are we talking about inspection days?

Q. Yes, sir.

A. Never.

Robert O'Connell - Direct

Q. You don't work for the DRMO, do you?

A. No.

Q. You're not going to get in trouble -- if you tell us truthfully that the regulations aren't enforced?

A. I hope not.

Q. Do you know if there is a -- have you ever gone into the bidding office?

A. That -- the bidding office is -- what I'm calling the bidding office is the first door with the little ramp that you go up to the door. I've been in there once.

Q. Do you have any recollection whether they sell soda or candy in there?

A. No, I don't, I'm sorry.

MR. NEUREITER: A moment, your Honor.

THE COURT: Yes.

MR. NEUREITER: Pass the witness, your Honor.

THE COURT: All right. Mr. Goelman.

MR. GOELMAN: A moment, your Honor?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. GOELMAN:

Q. Good afternoon.

A. Good afternoon.

Q. You done drinking?

A. Yeah.

Robert O'Connell - Cross

Q. You've been out at the DRMO eight to ten times, sir?

A. That would be correct.

Q. And fair to say that you spend average about 45 minutes inside the DRMO when you go?

A. On an average trip. If there wasn't much to look at that I saw as something that I wanted to look at or spend some time with, that would be fair, yes.

Q. I'm not talking about any particular trip. Just on the average, overall, is 45 minutes fair?

A. That was my estimate earlier. In rehashing, if you will, going to the DRMO, I don't know how I would get an average, 'cause there were times that I would walk through everything in there in 30 minutes, 45 minutes, and there were other times that I spent more time looking through stuff.

Q. Is it fair to say that your average amount of time that you spent outside was less than the average amount of time that you spent inside?

A. No, that would not be.

Q. You wouldn't characterize the average amount of time that you spent inside as less than 45 minutes?

A. Are we talking about inside?

Q. No, outside.

A. I would say -- I don't know how to average that. It would depend on what was there.

Q. Okay. Do you recall in October, 1996, having a telephone

Robert O'Connell - Cross

conversation with John W. Hough, investigator for Mr. Nichols' team?

A. After having discussed that call, yes, I remember having the call. I don't remember specifically a lot of the particulars of that call.

MR. GOELMAN: Okay.

May I approach, your Honor?

THE COURT: Yes.

BY MR. GOELMAN:

Q. I'm showing you the second page of the memorandum from that particular interview. Could you just read that and see if that refreshes your recollection that you told the investigator for the defense that your average -- the average amount of time you spent outside is less than 45 minutes?

A. Yes. It says, "O'Connell estimated" --

THE COURT: Don't read it out loud.

THE WITNESS: Oh, excuse me.

That's in effect what that says.

MR. GOELMAN: Okay, thank you.

May I approach --

THE COURT: I think you're being asked what you remember.

THE WITNESS: In the phone call, I believe I tried to explain to the -- Mr. Hough? Is that the name? -- my -- I'm going to say "routine," for lack of a better word --

Robert O'Connell - Cross

THE COURT: Okay.

THE WITNESS: -- at the DRMO. That there were times that I would come in, spend 30 minutes, walk through. There wasn't an awful lot I was interested in. I walked back to see what was in the military vehicle section, and leave. And those times, 30, 45 minutes.

I'm not sure that that isn't where that came from. If there was 10-inch that I wanted to look at, engines, I wanted to look at the little numbers, see where they were rebuilt, it took longer.

BY MR. GOELMAN:

Q. Mr. O'Connell, my question is only whether you remember telling the investigator that.

A. Specifically, no. I'm sorry, I see this, and I just don't remember the -- I don't remember much about the phone call.

MR. GOELMAN: Okay. That's okay.

May I retrieve the document, your Honor?

THE COURT: Yes.

MR. GOELMAN: Thanks.

BY MR. GOELMAN:

Q. In any case, Mr. O'Connell, after reviewing the sign-in log, you do recall being at the DRMO on April 18, 1995?

A. That is correct.

Q. And that was a viewing day?

A. That is correct.

Robert O'Connell - Cross

Q. And you viewed items inside and outside on that day?

A. That is correct.

Q. And you have no recollection of seeing Terry Nichols at the DRMO on that day?

A. No, sir. I don't remember seeing virtually anybody. I was focused on what I was doing and really wasn't paying attention to what was going on around me.

Q. After the bombing in Oklahoma City, did you see some television coverage?

A. Yeah, I did.

Q. And in connection with that television coverage, did you ever see a picture of Mr. Nichols on TV?

A. Yes, I have.

Q. No flash of recognition went off in your mind when you saw that picture, did it, Mr. O'Connell?

A. No, sir.

Q. And over the past several days, you've been in contact -- not necessarily spoken contact, but you've seen other witnesses subpoenaed by the defense; isn't that right?

A. Oh, yes, yes.

Q. And when you saw a couple of them, you did get the feeling that you'd seen them before --

MR. NEUREITER: Objection, your Honor.

THE COURT: Sustained.

BY MR. GOELMAN:

Robert O'Connell - Cross

Q. Mr. O'Connell, you don't have any independent recollection, aside from the log of April 18, 1995, do you, sir?

A. I have a difficult time with the date. The log is what told me that I was into the inside. I have some very vivid memories of the inside. I have some -- I'm going to say "sketchy" memories of the outside, and I basically have had to try and re-create the time frame, because there isn't a lot else that stood out from that date for me.

Q. Okay. So there are portions of your visit that you remember more clearly than others; is that right?

A. That's right.

Q. And is one of those portions that you remember -- or one of the aspects of the visit that your wife was with you?

A. Yes, sir.

Q. And you looked at dressers?

A. Yes, sir.

Q. And you remember that pretty vividly?

A. Yeah.

Q. The dressers are located on the inside, sir?

A. Yes, sir.

Q. And you were examining them pretty closely; is that fair to say?

A. That would be a fair assessment, yes.

A. That would be a full assessment, yes.

Q. Wife was pointing out every nick and scratch on the dressers?

Robert O'Connell - Cross

A. That's correct.

Q. And eventually you made a bid on at least one or more of those dressers?

A. We bid on two of them; that's right.

Q. And you also looked at some electronic equipment inside; is that right?

A. That's right.

Q. What kind of electronic equipment was that?

A. What -- my recollection, there was a number of pieces in a box, and the box was large. It was about the size, maybe a little bigger than this stand. And approximately this high. And there was -- as I recall, an oscilloscope, a signal generator, a power supply, and it seems like there was some other items that I had to move to look through those. That's pretty much -- my vivid memory, my most vivid memory of being in there was of digging through this box, trying to see specifically what was in there.

Q. How long would you estimate you spent digging through that one box?

A. I would say 20, 25 minutes.

Q. And that box alone?

A. That's correct.

MR. GOELMAN: One moment?

THE COURT: Yes.

MR. GOELMAN: May I approach, your Honor?

Robert O'Connell - Cross

THE COURT: No. You've already done an approach here.

MR. GOELMAN: Okay.

BY MR. GOELMAN:

Q. I'm displaying on the ELMO what's been already admitted as the last page of Government 1956.

You see your name on there, Mr. O'Connell?

A. Yes, sir.

Q. What time does the sign-in indicate?

A. The sign-in -- I believe it's 1434.

Q. Okay.

A. That's not as close as his, but I think that's what it is.

Q. How long would you estimate you spent inside the DRMO on April 18, 1995?

A. As best as I can remember -- and we basically had to reconstruct a lot of this time -- I know that I spent 20 to 25 minutes in that one box. My wife and I looked at approximately six or seven dressers. One of the dressers were -- I guess kind of nicer. And we spent more time looking at them. But I would estimate approximately 10 minutes per dresser. Maybe a little longer on the two bedrooms.

Q. So what's the sum total of the amount of time you spent --
A. Well, if you use six dressers and 25 minutes, about an hour and 25 minutes, hour and 30 minutes, sometime in that time frame.
Q. And that entire time was after you signed in; is that

Robert O'Connell - Cross
correct?

A. That's correct.

Q. Now, before coming to court, you've had a chance to see that log; isn't that right?

A. I'm sorry. The sign-in log?

Q. You've had a chance to see your name on the sign-in log?

A. Yes.

Q. And you told defense counsel the same thing that you've told this jury: that you spent an hour and a half inside the warehouse?

A. I believe I told them exactly the same thing.

Q. Did the defense counsel tell you that you were wrong about that, sir?

A. No.

Q. Did they tell you that you couldn't have been there for an hour and a half?

MR. NEUREITER: Objection, your Honor.

THE COURT: Sustained.

BY MR. GOELMAN:

Q. Before coming to Denver, sir, were you aware of what time the DRMO closed on viewing days?

A. No, I really wasn't.

Q. And did you come to find out that fact in Denver?

A. I have heard a figure of 3:00. I am relatively sure that figure's not accurate. I do not know. I honestly don't. I've

Robert O'Connell - Cross

heard that figure passed around. I do not know whether it's accurate or not.

Q. And who did you hear that figure from?

MR. NEUREITER: Objection, your Honor.

THE COURT: Sustained.

BY MR. GOELMAN:

Q. Mr. O'Connell, you've indicated that there's some portions of your memory that are more vivid than other portions; is that right?

A. That's right.

Q. And one of the things that you're more sure about is that this is one of the only times you've ever signed in to the DRMO; is that right?

A. That is correct.

Q. And you remember the layout of the sign-in table when you walked in, sir?

A. Pretty much, yes.

Q. Could you describe that, please?

A. When you walk in the door, to the right, there was like a -- they're not as big as these tables, but a table and then some other tables that go diagonally. And I couldn't remember whether there were two or three. But it kind of cordons off that area, if you will.

Q. Okay. Hold on one moment.

I'm showing you what's already in evidence as

Robert O'Connell - Cross

Government Exhibit 1961.

A. That's a big picture here.

Q. Could you pick up -- can you pick up the light pen there on your left -- or right in front of you and just go underneath the window, touch it directly to the screen, and circle the door where you signed in on April 18, 1995.

A. We -- you and I have discussed this. And this picture to me is difficult to -- but I believe it is this one right here.

Gosh, I'm not very good with that light pen, am I?

Right there, that door.

Q. You believe it's that one?

A. That's correct.

Q. You're not sure, though?

A. I'm not absolutely sure. I am probably 85 percent sure. I know that I walked from this gate past this ramp area, and then we came to the door and went in.

Q. Have you -- are you a hundred percent sure that it was either that door, or the door directly to the left of it?

A. That's correct.

Q. And you're equally certain that it wasn't the door all the way down on the right; is that right?

A. Oh, God, no.

Q. Positive about that?

A. No, I don't believe we walked that far.

Q. And you're as sure about that as you are of anything else

Robert O'Connell - Cross

that you've testified here today?

MR. NEUREITER: Objection.

THE COURT: Sustained.

MR. GOELMAN: I have nothing further, your Honor.

THE COURT: Any redirect?

MR. NEUREITER: No redirect, your Honor.

THE COURT: Witness excused?

MR. NEUREITER: Yes, your Honor.

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

THE WITNESS: Thank you, your Honor.

THE COURT: Members of the jury, we're going to take

a
recess at this point, our usual afternoon rest stop. Please continue to follow the cautions as given at all recesses of avoiding discussions of any aspects of the case with anybody, keeping open minds, and avoiding anything outside the evidence.
You're excused. 20 minutes

you're excused, 20 minutes.

(Jury out at 3:17 p.m.)

THE COURT: Mr. Tigar.

MR. TIGAR: No, I was just standing, your Honor, to ask your Honor if we could take the break.

THE COURT: Oh.

MR. TIGAR: And the Rocky Mountain News not to the contrary, I was going to let your Honor decide that question.

THE COURT: I don't know your reference to the Rocky Mountain News.

MR. TIGAR: There was a cartoon, your Honor, in the Rocky Mountain News; and I deny all responsibility for it.

THE COURT: Court's in recess.

(Recess at 3:18 p.m.)

(Reconvened at 3:35 p.m.)

THE COURT: Please be seated.

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

THE COURT: Next witness, please.

MR. WOODS: Yes, your Honor. Walt Fuller.

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

(Walter Fuller 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: Walter P. Fuller, F-U-L-L-E-R.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. THURSCHELL:

Q. Good afternoon, Mr. Fuller.

A. Good afternoon.

Q. Mr. Fuller, where do you live?

A. I live in Salina, Kansas.

Q. And are you working there?

A. Yes, I am.

Walter Fuller - Direct

Q. What do you do for work?

A. I beg your pardon?

Q. What do you do for work?

A. I am an aluminum wire welder employee for the Power Ed. company.

Q. You're a welder?

A. Yes.

Q. Now, you have never met Terry Nichols before, have you?

A. No.

Q. I want to direct your attention to March, 1995. Where were you working then?

A. In March of 1995?

Q. Yes.

A. I was working for the Power Ed. and doing a little subcontracting.

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

A. Oh, miscellaneous welding, repairing things.

Q. Was the fabricating or manufacturing of trailers part of

your business?

A. Repair and manufacturing, yes, of trailers for people who may want one.

Q. What kind of trailers did you make in that time period?

A. Mainly a small, two-wheel trailer used in lawn care.

Q. Lawn care?

A. Lawn care.

Walter Fuller - Direct

Q. Any other purposes that you remember?

A. Not offhand.

Q. Okay. I want to show you what's been marked as Defendant's Exhibit D603 and D603A, which I'm now going to show to Government counsel.

Mr. Fuller, would you take a moment and page through the -- I believe there are eight pages of D603 first. That's the larger one.

Do you recognize that, sir?

A. Yes.

Q. Now, is that your handwriting on it?

A. Yes, it is.

Q. Did you notice your name on it?

A. Yes.

MR. THURSCHELL: Okay. Your Honor, we would move the admission of D603.

MR. ORENSTEIN: No objection.

THE COURT: All right. It's received.

BY MR. THURSCHELL:

Q. Now, Mr. Fuller, would you take a look at 603A. Tell me if you recognize that.

A. Yes, I do.

Q. Okay. Is it fair to characterize that as an accurate, reduced version of 603?

A. Yes, it is.

Walter Fuller - Direct

MR. THURSCHELL: Your Honor, we would move the admission of 603A for demonstrative purposes only for use on the ELMO. It's inconvenient --

THE COURT: I see.

MR. ORENSTEIN: No objection.

THE COURT: You may use it for that purpose, yes.

MR. THURSCHELL: If I may approach?

THE COURT: Yes.

BY MR. THURSCHELL:

Q. Before I show you this, Mr. Fuller, can you tell me what prompted you to produce this document.

A. Well, on or about March -- the middle of March, between March, say, 15 and 17 of 1995, I got a phone call; and the person on the other end said he was Terry Nichols.

Q. All right. Go ahead. Go on.

A. Oh, anyway, he said he heard that I had built trailers; and I asked him, you know, how he got my name; and he heard I had trailers.

And so we began talking, and he was interested in a two-wheel trailer to haul six canoes, approximately.

Q. Have you built canoe trailers before?

A. I have built one for an organization that took wayward boys out to streams and taught them canoeing and camping out.

Q. So the design of a canoe trailer was something that you were familiar with at the time?

Walter Fuller - Direct

A. Yes, I was, sir.

MR. THURSCHELL: Okay. Now I'd like to publish 603A, which is in two pages. And I want to show the first page first.

BY MR. THURSCHELL:

Q. Could you tell the jury, Mr. Fuller, what this is, what they're looking at.

A. Well, you're looking at a canoe trailer that has a canoe-trailer device at the top --

Q. Before that, just what is this document generally, not so much what it depicts.

A. Oh, it's just a shop sketch that I made.

Q. Was this made in response to the phone call you just mentioned?

A. Yes, it was.

Q. Now, I want to zoom into -- on this page, and very briefly could you just describe the function of the various parts that the jurors are looking at now?

A. Well, the tower you see, the upright piece with the six different bars at a slant, were the superstructure to hold the canoes. Normally they were strapped on those bars, three on each side, upside down, so they could be towed down the road.

You're also looking at a front view showing the little 2-inch-ball coupler and the jack and, of course, the two tires that conform to the design.

Walter Fuller - Direct

Q. Okay. Zoom out again.

And the other sketches on this same page are other views of the same trailer design?

A. Yes, it is. You have a side view, and then you have a rear view showing the spare tire.

Q. Now, I want to show you the second page of 603A, which -- is this -- was the original version of this document -- was in more than one page, Mr. Fuller, if you recall?

A. No. It was the page -- the page before and this page, just two pages.

Q. Okay. So the first page was the left-hand side of the

original document, a copy of that, and this is the right-hand side?

A. Yes.

Q. I want to zoom in on the upper left corner of this second page of 603A, D603A. And could you tell the jury what 3-21-95 is there.

A. It was the date I did the drawing at home, March 21, 1995, just a shop sketch for a canoe trailer.

Q. And below that to the right there is a name and address?

A. "Rough shop sketch for Terry Nichols, 109 South 2nd Street, Herington, Kansas, ZIP Code 67449."

Q. And sliding it up a bit -- and are we now looking at your name and address at the bottom of that page?

A. That's right.

Walter Fuller - Direct

Q. Now, Mr. Fuller, after you sketched these sketches, designs, what did you do with this document?

A. Well, after I had sketched the -- I put it in my file waiting possibly for a reply from the person that said he was Terry Nichols.

Q. All right. Did you -- he had told you that he would get back to you if he wanted the final design?

A. Yes, I believe so.

Q. Okay. Did you ever hear from him again?

A. Yes, I did. Seemed like it was at least a month or so that I either felt -- it was a phone call or I think it was a letter that he wrote me that he had not had an opportunity to get a canoe dealership or franchise and that he would not be needing a two-wheel canoe trailer, delivery trailer, but he appreciated my efforts and my technical skills as to putting down ideas.

Q. Do you have a copy of that letter?

A. No, I do not. I had -- it wasn't necessary to keep it, I felt, so I went ahead and pitched it.

Q. Okay. And have you had any contact in any form with Mr. Nichols since that time?

A. No, I have not.

MR. THURSCWELL: Thank you very much, sir. No further questions.

MR. ORENSTEIN: No questions, your Honor.

THE COURT: Okay.

MR. THURSCWELL: Witness is excused.

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

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. WOODS: Wendy Menke.

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

(Wendy Menke 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: Wendy Menke, M-E-N-K-E.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. WOODS:

Q. Good afternoon, Ms. Menke. Will you tell the jury where you live.

A. I live in Beatrice, Nebraska.

Q. And what is your occupation?

A. Right now, I'm a secretary for a CPA.

Q. And in April, '95, what was your occupation?

A. I worked in the front office of a daily newspaper in Beatrice.

Q. And what was the name of the daily newspaper?

A. Beatrice Daily Sun.

Wendy Menke - Direct

Q. Was there a smaller newspaper that was associated with the Daily Sun?

A. Yes, there was.

Q. And what was the name of that?

A. The Plug Nickel.

Q. And would you give the jury an idea of what the Plug Nickel was?

A. The Plug Nickel was a free shopper that came out weekly, and it was distributed in the Kansas area, northeast Kansas area.

Q. The office is in Nebraska?

A. The office is in Nebraska.

Q. And the distribution was solely in one portion of Kansas? Is that correct?

A. It went down as far south as around Junction City, mainly northeast Kansas, a portion of southeast Nebraska.

Q. Okay. And by a shopper's newspaper, what do you mean?

A. Shopper newspaper. It was a free shopper, which means that the distribution or the circulation wasn't as high as like a newspaper. And it was a free shopper, which means they just put them out at distribution points and anybody could pick one up.

Q. All right. What would be included in this newspaper? What type of articles?

A. There would be classified advertising, with display

Wendy Menke - Direct

advertising.

Q. And how would a person put an advertisement in the newspaper, in the Plug Nickel?

A. A person could call in to the Plug Nickel phone line and place an ad. They could also send in the information and a payment for their ad into that office.

Q. In the newspaper itself, is there a section that discloses what the price is and how you mail in orders, mail in your payment so that you can place an ad in the newspaper?

A. Yes. Every week they would have an ad that lists the name of the Plug Nickel, along with advertising rates and different distribution sites that you could pick up a Plug Nickel.

Q. And have you reviewed those records at our request recently?

A. Yes.

Q. Would you -- there is an envelope in front of you; and if you would open that up. And in order -- there should be an exhibit in order on top which is your daily cash receipts. Is that correct?

A. That's correct.

Q. Okay. Now, is that a business record that was compiled in the course of business when you were there at the newspaper?

A. Yes, it was.

Q. Now, did the Government come and ask for certain records from the newspaper?

Wendy Menke - Direct

A. Yes, they did.

Q. After the bombing?

A. Yes, they did.

Q. And was this one of the records that was provided to the Government?

A. Yes, it was.

Q. Do you recall approximately when that was after the bombing?

A. Not exactly. I believe it was -- no, I don't. I don't know exactly when it was.

Q. Do you recall the bombing being in April of '95?

A. Yes, I do.

Q. All right. And can you give any idea about when the Government came and asked for your records?

A. I believe it was in the fall of that year, in October, early November approximately.

Q. Were there some advertisements in the Plug Nickel that had been placed by Terry Nichols, to your knowledge?

A. Yes, there was.

Q. Now, did you ever meet Terry Nichols in person?

A. No, I did not.

Q. You mentioned to the jury that there are two ways of placing the ad. Somebody could come in in person or could mail in the payment and the draft of the ad; is that correct?

A. That's correct.

Wendy Menke - Direct

Q. Now, in your daily cash receipts that's in front of you, that's a record kept in the normal course of business; is that correct?

A. Yes, it is.

MR. WOODS: Your Honor, we would offer into evidence 1102, which is the -- I'm sorry. It's 1101, daily cash receipts.

THE WITNESS: Oh, yes, uh-huh.

MR. ORENSTEIN: No objection.

THE COURT: All right. D1101 received.

BY MR. WOODS:

Q. And is 1102 a receipt listing for the previous day of April 17, '95?

A. Yes, it is.

MR. WOODS: We would offer 1102 also, your Honor.

MR. ORENSTEIN: No objection.

THE COURT: D1102 received.

MR. WOODS: To complete the record, we would offer into evidence Defense Exhibit 1761.

BY MR. WOODS:

Q. Would you look at 1761, there, Ms. Menke.

A. Uh-huh.

Q. This is a record that you provided to the Government or that your office provided to the Government?

A. Yes. We provided this to the Government.

Wendy Menke - Direct

Q. And were those the copies of payments that had been received by the Plug Nickel for advertisements in April?

A. Yes, they are.

MR. WOODS: And we would offer that into evidence, your Honor, 1761.

MR. ORENSTEIN: No objection.

THE COURT: All right. Received. D1761.

BY MR. WOODS:

Q. And then the last two items, Ms. Menke: If you would look at Exhibit 1098, which should be a Xerox copy of one of the pages.

A. Uh-huh.

Q. That is a page out of the Plug Nickel that you recognize?

A. Yes, it is.

Q. And then the last exhibit, which is 1760, which is a Xerox copy of pretty much a whole magazine -- whole newspaper, a weekly edition. Is that correct?

A. That's correct.

Q. And do you recognize that as the Plug Nickel?

A. That's correct.

Q. And what date is that week printed for?

A. This is the copy of the front page of the week of April 26 through May 2, 1995.

Q. And the prior exhibit, 1098: What week was that for, if you can tell by looking?

Wendy Menke - Direct

A. That was a page out of the issue of the week of April 19 through April 25, 1995.

MR. WOODS: We would offer into evidence, your Honor, 1098 and 1760.

MR. ORENSTEIN: No objection to 1098.

May I inquire if 1760 is just for the page of the ad, or the entire --

MR. WOODS: The ads are on two separate pages.

MR. ORENSTEIN: No objection.

MR. ORENSTEIN: NO OBJECTION.

THE COURT: But the pertinent part of the paper.

MR. WOODS: Just the two pages, your Honor.

MR. ORENSTEIN: For those purposes, no objection,

your
Honor.

THE COURT: D1098 and D1760 received.

BY MR. WOODS:

Q. Looking at 1101, Ms. Menke, do your records reflect a payment from a Mr. Terry Nichols?

A. Yes, they do.

Q. And how much was the payment for?

A. The payment was for \$27.20.

Q. Now, did you -- can you tell from that amount of payment how many ads were purchased and for what period of time?

A. Actually, from that amount, I cannot tell exactly because a Plug Nickel advertisement is very low in price, so --

Q. What is the price for, say, a 1-inch ad to run a week?

Wendy Menke - Direct

A. A 1-inch-display classified ad would be approximately \$4 to \$4.50 for one week.

Q. Okay. And on 1102, does that also reflect your cash receipts showing that payment?

A. Yes, it does.

Q. And then 1761 is a copy of the actual money order?

A. Yes, it is.

Q. And who is the money order made payable to?

A. The Plug Nickel.

Q. And who was the payer?

A. The payer was Terry Nichols.

Q. And is an address listed?

A. Yes, there is.

Q. And what address is listed?

A. It is 109 South 2nd, Herington, Kansas.

Q. Okay. And the amount of the money order?

A. Is \$27.20.

Q. Now, on 1098, the copy of the one page, you see an ad there for a fuel meter?

A. Yes, I do.

Q. And how does that ad read?

A. It reads, "Fuel meter, LC meter with register 2-inch capacity, 10-100 GPM flow rate, can meter any type of fuel. New, \$1,800. Will sell for \$900 OBO, (913) 258-3400."

Q. Okay. What does "OBO" mean?

Wendy Menke - Direct

A. "Or best offer."

Q. And the phone number is (913) 258-3400?

A. Yes, it is.

Q. Now, do you see an ad below that a couple of ads down with the same phone number advertising nails?

A. Yes, I do.

Q. And would you read that for the jury, please.

A. "Nails, 5-inch, common 40 D-size nails in 50-pound boxes, retail \$1 per pound, will sell 60 cents per pound. Have over 2,000 pounds. Can deliver large quantities. (913) 258-3400."

Q. That's the same phone number that's listed above?

A. Yes, it is.

Q. And then if you would go to the next exhibit, 1760. And is that the Plug Nickel for the subsequent week of April 26 through May 2, '95?

A. Yes, it is.

Q. And would you go to page 6. Do you see an ad on that page for the fuel meter again?

A. Yes, I do.

Q. And is it the same wording that you had in the previous week?

A. Yes, it is.

Q. Do you also see an ad there for nails?

A. Yes, I do.

Q. Is it the same phone number for both of those as the

Wendy Menke - Direct

previous week?

A. Yes, it is.

Q. Would you go to page 8. Do you see an ad there on the right column for hand tools?

A. Yes, I do.

Q. Is there a phone number at the bottom of that ad?

A. Yes, there is.

Q. What's the phone number?

A. (913) 258-3400.

Q. And would you read that ad for hand tools?

A. "Hand tools for sale. Many new to used. D-handle spade/shovels, 36-inch and 18-inch crosscut handsaws, single-blade axes, mattocks, and C crow bars, D-handle shovel handles, 40D 5-inch common nails in 50-pound boxes, and sandbags. (913) 258-3400."

Q. And further down on that column, do you see a -- another ad for sandbags?

A. Yes, I do.

Q. Is there the same phone number listed there?

A. Yes, there is.

Q. Would you read the sandbags ad.

A. "Sandbags, new and used, poly OD green and brown burlap, great for berming, driveways, temperature walls, stopping soil erosion, etc. (913) 258-3400."

Q. Okay. And again, what week was those three adds running?

Wendy Menke - Direct

A. They were --

Q. Should be on the front there.

A. April 26 through May 2, 1995.

Q. Now, would a payment of 27.20 cover those ads for the

two-week period there that we have found in the newspaper?

A. Yes, it probably could.

MR. WOODS: Okay. Thank you, Ms. Menke. I appreciate it.

Pass the witness, your Honor.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good afternoon, Ms. Menke.

A. Hi.

Q. My name is Jamie Orenstein.

Ma'am, the ads that you've just been reading to the jury that Mr. Nichols sent in payment for: The earliest of those ads was to run April 19 and the following weeks; correct?

A. That's correct.

Q. And it was paid for with a money order, and that's Defense Exhibit D1761. Correct?

A. That's correct.

Q. Let me just put it up on the display here, the ELMO.

That's the -- a copy obviously -- color has been reversed, but it's a copy of the payment that you received?

Wendy Menke - Cross

A. That's correct.

Q. Now --

MR. ORENSTEIN: I'm sorry. Could we have it up on the --

THE COURTROOM DEPUTY: What is the exhibit number?

MR. ORENSTEIN: I'm sorry. 1761. Defense Exhibit 1761.

I apologize, your Honor.

Thank you.

BY MR. ORENSTEIN:

Q. Now that we can all see it, that's a copy of the payment that Mr. Nichols sent to your company for the ads. Correct?

A. That's correct.

Q. Now, your records show that it was received on the 17th of April?

A. That's correct.

Q. Do you see on the display here the date of this money order? And perhaps I can zoom in to where it says year, month, day. Do you see that, where I'm pointing right now?

A. Yes, uh-huh.

Q. And that says '95 is the year, 04 the month, and 14 the day.

A. Correct.

Q. April 14, 1995?

A. Right.

Wendy Menke - Cross

Q. But now this transaction was done entirely by mail;

correct?

A. I believe so.

Q. You don't have any personal knowledge?

A. I don't have any personal knowledge of that. I assume it was by mail.

Q. So you have no way of knowing what time of day this money order was purchased?

A. No.

Q. Or where or who Mr. Nichols was with, if anybody, at the time of his purchase?

A. No.

MR. ORENSTEIN: Thank you, ma'am. Nothing further.

MR. WOODS: Thank you. She may be excused.

Thanks for coming.

THE COURT: I take it that's agreed?

MR. ORENSTEIN: Yes, sir.

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

THE WITNESS: Thank you.

MR. WOODS: Dennis Crawford, your Honor.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Raise your right hand.

(Dennis Crawford 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: Dennis Crawford, C-R-A-W-F-O-R-D.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. NEUREITER:

Q. Mr. Crawford, how are you doing?

A. I'm fine.

Q. Where are you from, Mr. Crawford?

A. Orlando, Florida.

Q. And what do you do for work?

A. I work for a satellite communications company.

Q. Are you presently out of work?

A. Workmen's comp.

Q. Is that because of your injury?

A. Yes.

Q. What other things have you done in the past besides working for a satellite communications company?

A. I presently hold an FFL.

Q. What is an FFL?

A. Federal Firearms License.

Q. And do you go to gun shows?

A. Yes, I do.

Q. What do you do at gun shows?

A. I display my goods, take orders, sell items, sell reloading supplies.

Dennis Crawford - Direct

Q. How many gun shows would you say you've been to in the last five years?

A. 100, 150.

Q. Do you regularly go to gun shows now?

Q. Do you regularly go to gun shows now?

A. Yes, I do.

Q. How often do you go to gun shows?

A. I attend them whenever there are a local show for me to go to, which would be about once a month.

Q. Is that the nature of the gun-show business that you would attend them, drive around and attend them on a regular basis?

A. Yes.

Q. Let's go back to the 1995 time period. Where were you living at that time?

A. I was living in Cincinnati, Ohio. Take it back. Mansfield, Ohio.

Q. Okay. And to take you back to the February, 1995 time period, did you attend a gun show in Des Moines, Iowa?

A. Yes, I did.

Q. Do you remember the date of that gun show?

A. February 17, 18, and 19.

Q. How can you remember the date of that particular gun show?

A. I keep calendars of all the shows I go to for tax purposes.

Q. Are gun shows scheduled on regular weekends over the course of the year, particular gun shows in particular locations?

A. Yes, they are.

Dennis Crawford - Direct

Q. What kinds of materials did you have for sale at that particular gun show?

A. I had reloading equipment, brass bullets, primers, powder, walnut media.

Q. Are those the typical things that you sell at gun shows?

A. Yes.

Q. Do you see Terry Nichols here?

A. Yes, I do.

Q. Have you seen Terry Nichols before?

A. Yes, I have.

Q. When did you see Terry Nichols before?

A. I've seen -- in February at the Iowa gun show.

Q. Describe that for us, please, how you met Mr. Nichols at that gun show.

A. Okay. On the date that we were setting up, which was the 17th, a Friday, we were -- the people that was in the one corridor at the gun show there -- we were setting up, and we were disappointed with our location.

Q. Why was the location disappointing to you?

A. It was in a bad location for traffic, which at a gun show you rely on traffic to go past your tables to see your goods.

Q. And was your -- how was your location disappointing?

A. It was in a side corridor which the main flow of traffic would walk past unless they happened to turn their head and see that there was tables in that corridor.

Dennis Crawford - Direct

Q. Did you discuss that with Mr. Nichols?

A. Yes, we did.

Q. Describe what Mr. Nichols was setting up that day.
A. On the day that he arrived and was setting up his table, he had odds-and-end bivouac equipment which is military surplus camping gear. He had a few miscellaneous ammo rounds for sale. I believe he had a couple coins for sale. .30 caliber carbine rifle for sale. Typical nonchalant (sic) equipment that one would see at a gun show.
Q. Did he have sleeping bags?
A. Yes, he did.
Q. Did he have foam pads?
A. Yes, he did.
Q. Did he have canteens?
A. Yes, he did.
Q. Was this all typical military surplus material?
A. Yes, it is.
Q. And did you have conversations with Mr. Nichols over the course of that weekend?
A. Yes, we did.
Q. Was there anything unusual about those conversations that you had with Mr. Nichols over the course of the weekend?
A. None whatsoever.
Q. I'm sorry?
A. None whatsoever.

Dennis Crawford - Direct

Q. Would he watch your table?
A. Yes, he would.
Q. And would you watch his?
A. Yes, I would.
Q. Explain why that happens at gun shows.
A. Well, at certain times, since you're there at the table by yourself, unless you have a helper with you, there is times that nature calls or you get hungry. Therefore, one would take a break if it wasn't crowded, the tables weren't busy. It's customary for the person next to you to watch your table while you take and go to the rest room or go to the cafeteria, depending on whether or not they were serving food, and then vice versa, they'd come back, you would go. So it's very customary for the person next to you to watch your table.
Q. And Mr. Nichols did that weekend?
A. Yes, he did.
Q. Was there a -- this was a bad location for you; correct?
A. Yes.
Q. Was there a bad -- was there an empty table along that corridor?
A. Yes, there was.
Q. Could you describe that issue and how it was resolved?
A. Yes, I can. Anytime at a gun show -- the person with experience in a gun show, if you have an empty table, what you want to do is when the doors open is quickly fill that table.

Dennis Crawford - Direct

The belief is that empty table will discourage customers from coming down that row, especially if they see too many. So when the door is opened on that day, we had one empty table. I asked Mr. Nichols if he needed it; and at that time he stated he didn't really have enough stuff to fill that table, so I spread my equipment on out to fill that table.

Q. Do they sell literature at gun shows?

A. Yes, they do.

Q. What kinds of literature do they sell at gun shows?

A. They sell manuals on reloading. They sell army surplus manuals. They sell manuals on survival. They sell manuals on -- from the manufacturers of firearms.

Q. Do they sell manuals on explosives?

A. Yes, they do.

Q. Do they sell manuals on improvised explosive devices?

A. Yes, they do.

Q. Do they sell manuals on military explosive techniques?

A. Yes, they do.

Q. Did you sell that kind of literature?

A. Yes, I have.

Q. Why did you sell that kind of literature?

A. Profit margin.

Q. Explain that to the jury, please.

A. You can take and get a discount when you buy your books. You buy 12 books or more, it may only cost you \$2 to \$2.50 a

Dennis Crawford - Direct

book. They sell between 5 and \$6 apiece on the table. It's a high-profit, fast-moving item.

Q. When you say high-moving (sic), fast-moving item, what do you mean by that?

A. People come in, they buy them for gags, for gifts. They buy them for all various reasons. They move quickly, and they're a sought-after book mainly because they're an actual military-issue book that's been civilianized.

Q. Have you ever built an improvised explosive device using the manuals that you sold?

A. No, I haven't.

Q. And -- but you maintained and sold those because they were -- there was a market for those at gun shows?

A. Yes.

MR. NEUREITER: One moment, your Honor?

THE COURT: Yes.

MR. NEUREITER: Pass the witness.

THE COURT: All right. Mr. Orenstein.

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Good afternoon, sir. My name is Jamie Orenstein.

We've never met before; is that correct?

A. Not to my recollection.

Q. Now, sir, you've been telling us about meeting Mr. Nichols at the gun show in Des Moines. That was the Adventure Land

Dennis Crawford - Cross
show; correct?

A. Yes.

Q. And that was in February of 1995?

A. Yes.

Q. February 17 to 19?

A. Yes.

Q. When did you find out that the man's name was Mr. Nichols?

A. I found out after the promoter called me and asked me if I remembered the table next to me and what the name was of that person, and then he started asking me by a questionnaire of what names rang a bell.

And then when the federal agents came to my house and started asking me the same type questions.

Q. Okay. At the show, he didn't tell you his name, did he?

A. No, he didn't. We just introduced each other real quickly. It's -- walk in, hi, how are you doing, I'm so-and-so. If he did introduce himself to me -- I'm lousy at catching names at the first time. I usually have to ask two or three times, but the opportunity didn't come up to say, hey, what did you say your name was.

Q. Well, it's true, isn't it, that Mr. Nichols was at that show registered under the name of Joe Rivers?

MR. NEUREITER: Objection. Lack of foundation.

THE COURT: You'll have to see if he knows.

BY MR. ORENSTEIN:

Dennis Crawford - Cross

Q. Do you know, sir?

A. At this time, I do.

Q. Okay. And was he registered as Joe Rivers?

MR. NEUREITER: Objection, your Honor. Source of his knowledge.

THE COURT: We need the source of it.

BY MR. ORENSTEIN:

Q. What is the source of your knowledge?

A. The source of my knowledge is the seating arrangement or the table arrangement at that show.

Q. And you've seen a business record from that show of the seating plan; correct?

MR. NEUREITER: Objection, your Honor, if he's talking about a document that is not in evidence.

THE COURT: Yes. He's relying on a seating chart that's hearsay.

MR. ORENSTEIN: Very well.

BY MR. ORENSTEIN:

Q. Now, you told us that you and Mr. Nichols were in a bad location at the show; is that correct?

A. Yes, I have.

Q. And you discussed that with him?

A. Yes.

Q. Was the reason that Mr. Nichols had a bad location that he was a walk-in, he hadn't registered in advance?

Dennis Crawford - Cross

A. I couldn't answer that. I don't know how his registration went.

Q. But you do know that when there was a second table available, he didn't have enough items to expand to that second table?

A. That's correct.

Q. Now, while you were there at the show with Mr. Nichols, did he have -- he had a normal amount of customers; is that correct?

A. Same traffic flow that went by his table went by my table.

Q. Did he have any visitors who stayed with him for an extended period?

A. He had one person that showed up that greeted him, that shook hands, sat down, and read a catalogue.

Q. Do you know who that was?

A. No, I don't.

Q. Was this a customer, or someone he appeared to know?

A. Yes.

Q. Which one? Somebody he appeared to know, or a customer?

A. Oh, the person who walked up that greeted him when they shook hands -- the conversation appeared that they knew each other and sat down and read a catalogue together.

Q. About how long were they together?

A. Maybe a half hour.

Q. Now, the last time you saw Mr. Nichols was February 19,

Dennis Crawford - Cross

1995; correct?

A. In person, yes.

Q. And you've never seen him in person -- you've never been with him from that day until today; correct?

A. Correct.

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

THE COURT: Yes.

BY MR. ORENSTEIN:

Q. Oh, there was one other thing: Was Mr. Nichols selling ammonium nitrate?

A. No.

MR. ORENSTEIN: Nothing further. Thank you.

THE COURT: Any redirect?

MR. NEUREITER: No, your Honor. The witness is excused.

We thank you, sir.

THE COURT: All right. You may step down. You are excused.

Be careful.

All right. Next, please.

MR. WOODS: Yes, your Honor. James Shirley.

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

(James Shirley 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: James Orville Shirley, S-H-I-R-L-E-Y.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. THURSCHELL:

Q. Hello, Mr. Shirley.

Where do you live currently?

A. Salina, Kansas.

Q. And what do you do there for work?

A. I'm a medical stenographer.

Q. What is a medical stenographer?

A. Performing diagnostic medical ultrasound.

Q. Now, I want to direct your attention to March of 1995. Do you recall attending a gun show in Manhattan, Kansas, around that time?

A. Yes.

Q. Was there a particular reason that brought you to that particular gun show?

A. Normally go to them to either buy or sell or trade like a rifle or a pistol or something.

Q. And do you recall if you had that kind of intention when you went to the Manhattan, Kansas, gun show?

A. Yes.

Q. And what was your intention?

James Shirley - Direct

A. I think I had one or two pistols with me that day that I wanted to sell.

Q. Okay. How did you go about trying to sell your gun?

A. You go inside the gun show and walk around to the various vendors inside and see if they'd be interested in buying.

Q. Okay. And did you find one who was interested?

A. Yes.

Q. Did you sell your gun?

A. Yes.

Q. And do you know who you sold your gun to?

A. Terry Nichols.

Q. Was he a vendor at that gun show?

A. Yes.

Q. Did he have a table?

A. Yes.

Q. All right. Do you recall what he was selling?

A. He had various, if I recall right, rifles and shotguns and maybe some pistols on his table and, I think, probably some ammunition.

Q. Do you recall any army surplus?

A. No.

Q. Did you have any conversation with Mr. Nichols?

A. Just usual small talk.

Q. All right. Do you recall any of the substance of that conversation?

James Shirley - Direct

A. Such as? I don't --

Q. Well, if I were to refresh your memory by asking if you recall discussing MREs with him, would that --

A. Oh, okay.

Q. Does that refresh your memory?

A. Yeah. He bought one of my pistols, and I think he was interested in the other one; and I think I remember him saying that he needed to save some money back to buy some MREs.

Q. Now, what are MREs?

A. That stands for "meals ready to eat." It's military food that they eat out in the field, I think.

Q. Did you dicker over the price of your gun?

A. Oh, yeah.

Q. Anything unusual about that?

A. No.

Q. What was the final price, if you recall?

A. I believe I sold him the pistol for between 6- and \$700.

Q. Anything else involved in the exchange?

A. I sold some clips along with it and a pistol case to put it in.

Q. Did you and he exchange any receipts?

A. No.

Q. Did you fill out any forms?

A. No.

Q. Anything out of the ordinary about that?

James Shirley - Direct

A. No.

Q. Sir, are you a gun collector?

A. Small-time.

Q. Small-time. Do you attend gun shows regularly?

A. Yeah, pretty much.

Q. Is that the -- in the general area around Salina?

A. Yes.

Q. Did you formerly live in Texas?

A. Yes.

Q. Did you attend gun shows there?

A. Yes.

Q. Is literature commonly available at gun shows, to your knowledge?

A. Yes.

Q. All right. What kinds of literature?

A. Oh, you can see literature about various things.

Q. Well, let me ask more specifically: Have you ever seen The Turner Diaries for sale?

A. Yes.

Q. Is that a rare phenomenon?

A. Not really.

Q. Okay.

A. I've seen it, you know, for sale at several gun shows.

O. Have you ever seen items related to the Waco incident for

sale at gun shows?

James Shirley - Direct

A. Yes.

Q. Is that uncommon?

A. No.

Q. What kinds of items have you seen for sale?

A. Oh, there has been slogans, you know, put on like hats and T-shirts and bumper stickers and pins.

MR. THURSCHWELL: One moment, your Honor.

THE COURT: Yes.

MR. THURSCHWELL: I think that's all. Thank you, sir.

THE WITNESS: That's it?

MR. THURSCHWELL: There may be -- others may have questions.

THE COURT: Other counsel have a chance to ask you some questions.

THE WITNESS: Okay.

THE COURT: That's the procedure.

Nobody is laughing at you.

THE WITNESS: That's all right.

MR. ORENSTEIN: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. ORENSTEIN:

Q. Soon, sir, but not quite yet.

A. You've got to give me credit for trying.

Q. I do just have a few questions. Sir, my name is Jamie Orenstein. We haven't met before; is that correct?

James Shirley - Cross

A. I think I talked to you on the phone one time.

Q. Right. And we spoke briefly, and you told us you were coming up here?

A. Yes.

Q. Okay. Now, you told us that you sold a gun to Mr. Nichols.

A. Yes.

Q. Is that right?

A. Yes.

Q. At the time, did you know what his name was?

A. No.

Q. He didn't tell you?

A. I don't think so.

Q. And someone later told you what his name was?

A. No.

Q. How did you learn his name?

A. I think probably from the television, after he was picked up in Herington.

Q. All right. So you recognized the photograph?

A. Yes. And I kind of put -- put it together like -- I believe that's the guy that I sold the gun to, you know, at a gun show.

Q. When you saw him at the gun show -- now, this was in

Manhattan, Kansas; correct?

A. Yes.

Q. And that's at the old armory there?

James Shirley - Cross

A. I believe that's where it was taking place, at the armory.

Q. And it was in sort of two rooms, and there is one off to the side a little bit? Do you recall that?

A. I hadn't really thought about it, but I believe you're right. I believe it was kind of like in -- kind of two different rooms.

Q. Have you been shown, in preparation for coming here today, a floor plan of that show?

A. No.

Q. Okay. And you don't know what name Mr. Nichols used when he registered for that show, do you?

A. No. Absolutely not.

Q. All right. Now, you told us that you noticed that Mr. Nichols had a number of guns at the table; correct?

A. Yes.

Q. A number of long guns?

A. I believe there were long guns there.

Q. And also pistols; correct?

A. I remember the long guns for sure, but there may or may not have been pistols there.

Q. Now, you've been to a number of gun shows from time to time; correct?

A. Yes.

Q. Often you've seen, I'm sure, that dealers have business cards or names of their business or something about their

James Shirley - Cross

product, you know, advertising there on the table. Is that right?

A. Yes.

Q. Did Mr. Nichols have any kind of sign, any indication that you saw?

A. I'm not sure. I don't really recall any.

Q. Was there any sign that you saw about what he was selling and what kind of paperwork would be involved?

A. No.

Q. Now, this was in March of 1995; correct?

A. Yes.

Q. And it ended -- what was it? March 18 was the last day of the show?

A. May -- I guess.

Q. You don't recall the specific date?

A. No, I don't recall the specific day, no.

Q. But you know it was March of 1995.

A. Yeah.

Q. And that was the one and only time you've ever seen Mr. Nichols?

A. That, yes.

Q. And from that day to this, you have no idea where he was or what he was doing.

A. No.

MR. ORENSTEIN: Thank you. Nothing further.

MR. THURSCHELL: Nothing further, your Honor. The witness is excused.

THE COURT: All right. Now you're excused.

THE WITNESS: Thank you.

THE COURT: Next, please.

MR. WOODS: Yes, your Honor. James Sargent.

MR. MACKAY: Your Honor, may we approach?

THE COURT: Yes.

You can stand and stretch, if you want.

(At the bench:)

(Bench Conference 104B2 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: We're changing on the order of witnesses. That's what the discussion was about.

What it means is we're running ahead of schedule.

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

(Martin Powell 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: Martin Walton Powell, P-O-W-E-L-L.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good afternoon, Mr. Powell.

A. How do you do, sir.

Q. Do you go by "Walt" Powell?

A. Walt, yes, sir.

Q. Would you tell the jury, please, where you live.

A. I live at 6447 Albert Pike Road, Royal, Arkansas.

Q. And do you have a neighbor named Roger Moore?

A. Yes, I do.

Q. How long have you known Roger Moore?

A. Approximately five years.

Q. Now, sir, would you tell the jury, please, what do you do

Martin Powell - Direct

for a living?

A. I'm a retired firefighter from Hot Springs Fire Department, and currently I supervise the carpentry shop at the Hot Springs Rehabilitation Center.

Q. Do you also do volunteer work at your church?

A. Yes, sir.

Q. What kind of volunteer work do you do?

A. Carpentry work.

Q. Now, do you -- can you remember -- when is the first time you can remember meeting Mr. Moore?

A. I don't recall the exact date. He wanted to buy our place, and he asked us if we were interested in selling it. And I -- I don't recall.

Q. Was anybody with him when you met him?

A. Karen Anderson.

Q. And how did he introduce Ms. Anderson?

MS. WILKINSON: Objection, your Honor. I believe this is supposed to go to the testimony of Mr. Moore.

THE COURT: What?

MS. WILKINSON: Go to the impeachment of the testimony of Mr. Moore, not to all the facts about Mr. Moore.

THE COURT: The objection is overruled.

BY MR. TIGAR:

Q. How did he introduce Ms. Anderson?

A. Karen.

Martin Powell - Direct

Q. Did he say -- did he indicate that they had any particular relationship?

A. No, sir.

Q. Okay. Did you ever meet someone identified as Carol Moore?

A. At sometime later, I did.

Q. Do you remember how you were introduced to Carol Moore?

A. As Roger's sister.

Q. Now, I want to direct your attention to the 5th of November of 1994, a Saturday. Do you remember that day?

A. Yes, sir.

Q. All right. Now, I want to introduce a couple of -- ask you about a couple of other people. What is your wife's name, sir?

A. Verta.

Q. And does she have a nickname?

A. Pudge.

Q. Can I call her that to her face?

A. Yes, sir.

Q. All right. And do you have a son?

A. Yes, I do.

Q. And what -- do you have more than one son?

A. I have two sons.

Q. And what are their names, sir?

A. Lance and Kirk.

Q. Now, on the 5th of November, 1994, what were you doing that day?

Martin Powell - Direct

A. I was working on a new sanctuary at the Royal Baptist Church.

Q. Did there come a time when Ms. Moore came over and got you?

A. Not Mrs. Moore.

Q. Thank you, sir. Did there come a time --

A. My wife.

Q. -- when Ms. Powell came over and got you?

A. Yes, sir.

Q. About what time was that, sir?

A. I don't recall. It's some -- sometime around midmorning.

Q. Now -- and as a result of that conversation, did you go back to your house?

A. Yes, sir, I did.

Q. Who was at your house when you got there?

A. My oldest son, Lance, and Roger Moore.

Q. And what was Mr. Moore doing when you first saw him back at the house?

A. I walked in the back door and asked him what had happened. He was standing -- standing up at that particular time.

Q. And what did he say to you, if you can recall?

A. He informed me that he had been robbed, and I asked him if he had called the police. And he informed me that he had not. He specifically said no.

Q. And what did you see him do then?

A. I informed him that he should contact the police. And I

Martin Powell - Direct

think -- I don't remember the sequence of events that happened, but he -- he told me about the robber, what he was wearing and type of weapon he used; and then he called the police, called the sheriff's department.

Q. Now, did there -- did there come a time when the sheriffs arrived?

A. Yes, sir.

Q. Who arrived first, if you remember, from the sheriff's office?

A. Some deputy. I don't know his name.

Q. Now, did -- did there come a time later when you and Mr. Moore went over to Mr. Moore's house?

A. Yes.

Q. Tell us about that. What did you do?

A. He -- he wanted me to go to his house with him, and I informed him I would; and he -- Of course, he had already told me that his phone lines had been cut. And I told him I would come over and reconnect his phone lines for him.

He said he needed to use his phone.

Q. Now, did you -- can you tell us what you can remember happening? You left your house and walked over to his house?

What's the next thing that happened?

A. I walked in the kitchen of his house, and the deputy was sitting at the kitchen table.

Q. Now --

Martin Powell - Direct

A. And the deputy looked at me and asked me if I believed this. And I told him at this point --

MS. WILKINSON: Objection, your Honor.

THE COURT: Sustained.

BY MR. TIGAR:

Q. Sir, did there come a time --

MS. WILKINSON: Your Honor, can we have that entire comment stricken from the record? I don't believe it was responsive.

THE COURT: Yes. It's stricken. The jury will disregard the conversation with the deputy.

MR. TIGAR: With the deputy, yes, sir.

BY MR. TIGAR:

Q. Just what you can remember doing, sir: That's all I'm asking.

A. I stood in the kitchen until the investigators got through with their work; and after being told that they had completed their investigation, I reconnected his phone lines and left.

Q. Do you remember how you knew where to go to reconnect the phone lines?

A. I either asked or he had told me where. I don't recall.

Q. Now, sir, had you ever had occasion before that day to discuss politics with Mr. Moore?

A. Yes.

Q. Had he ever given you anything of a political nature or

Martin Powell - Direct

there was a -- some political matter?

A. Videotape.

Q. What was the videotape that he gave you, sir?

A. One was -- pertained to antigovernment.

Q. And what was it about, sir?

A. I don't recall. I watched a short 5 minutes of it and returned it.

Q. Did it have to do with Waco?

A. No. He gave me a -- another tape that had to do with Waco.

Q. And what was the theme of that one, if you remember?

A. Mainly the burning of the place, as I recall.

Q. Now, did you also ever talk to Mr. Moore about NATO?

A. He had discussed that with me, yes.

Q. And what did he tell you about NATO?

A. He said that the government was building detention centers for rebels because there was supposed to be some type of a takeover, and he talked about Russian tanks being here and black helicopters.

Q. Did he ever say -- talk about whether NATO -- what NATO troops might do to American citizens?

TROOPS MIGHT DO TO AMERICAN CITIZENS:

A. He said that -- that the reason they're using NATO troops is because our own military troops won't fire on their people.

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

THE COURT: Ms. Wilkinson.

MS. WILKINSON: Thank you.

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, Mr. Powell.

A. Hello.

Q. We've talked before, haven't we?

A. Yes.

Q. You've been very cooperative with the Government?

A. I hope so.

Q. Always told us what you knew; right?

A. Correct.

Q. That's what you're here to do today?

A. Yes, ma'am.

Q. Now, when you met up with Mr. Moore on November 5, 1994, he told you that he had been robbed, didn't he?

A. Yes.

Q. He told you the fellow had a shotgun?

A. Yes.

Q. Told you there was a garrote wire hanging from the shotgun?

A. I don't recall that.

Q. Okay. Do you recall him telling you that the man was wearing a ski mask?

A. Yes.

Q. And wearing camouflage clothing?

A. Yes.

Martin Powell - Cross

Q. At some point did he show you where the man was standing when he had been robbed?

A. Yes.

Q. Do you recall where that was?

A. The corner of his house.

Q. Right there on the side of his house?

A. I believe so.

Q. If I showed you a picture, would that help?

Do you recall -- you know his door where you go into the carport. If you're looking into his house and you go through the carport -- and there is a door right there; isn't that right?

A. Uh-huh.

Q. And that lets you into the kitchen?

A. Uh-huh.

Q. If you're standing back looking at that door, did he point out that the robber was right on the right, right around the corner?

A. To the right, right around the corner.

Q. And he told you that back on November 5, 1994?

A. Correct.

Q. And he told you that he had been robbed?

-
A. Yes.
Q. Did he tell you that guns had been stolen from him?
A. Yes.

Martin Powell - Cross

Q. And other valuables? Other valuable items in his house?
A. I don't recall that.
Q. You don't recall that detail.
 But he did tell you that guns had been stolen?
A. Yes.
Q. Now, you did see the sheriffs arrive, did you not?
A. Pardon?
Q. You saw the sheriffs arrive?
A. Yes.
Q. The deputy sheriff arrive?
A. Yes, ma'am.
Q. And do you recall whether the deputy sheriff came to your house, or went straight to Mr. Moore's house?
A. He came to my house.
Q. And did you talk to him there?
A. The deputy?
Q. Yes.
A. No, ma'am.
Q. Did Mr. Moore talk to him there?
A. Yes.
Q. And did you go up to Mr. Moore's house after the deputies arrived, or before they arrived?
A. After.
Q. So if someone said you went up there before, they'd be wrong?

Martin Powell - Cross

A. That's correct.
Q. And you saw the deputies interviewing Mr. Moore?
A. No.
Q. Did you --
A. I saw the investigators doing their work.
Q. You saw them walking around Mr. Moore's house?
A. That's correct.
Q. And did you -- were you able to walk around Mr. Moore's house?
A. No. I stayed right there in the kitchen.
Q. You let them do their work?
A. You betcha.
Q. Now, you didn't contact the sheriff's office to tell them to come to your house, did you?
A. No.
Q. And you're not aware whether your wife or your son did; correct?
A. To my knowledge, they didn't.
Q. And you did see Mr. Moore make a phone call, didn't you?
A. Yes.

Q. And sometime thereafter, the sheriff's office arrived?

A. Yes.

Q. And did you understand that they were there to investigate the robbery of Mr. Moore?

A. I assumed they were, yes.

MS. WILKINSON: No further questions.

MR. TIGAR: No questions.

Thank you very much, Mr. Powell.

THE COURT: I take it he's excused.

MR. TIGAR: Yes. He is excused, your Honor.

THE COURT: Mr. Powell, you may step down. You're excused.

Next, please.

MR. TIGAR: Call Shelby Terry.

THE COURTROOM DEPUTY: Shelby Terry?

MR. TIGAR: Yes. Shelby Terry.

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

(Shelby Terry affirmed.)

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

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

THE WITNESS: Shelby Terry, T-E-R-R-Y.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. Good morning -- or good afternoon, Mr. Terry. What -- where do you live, sir?

A. Hot Springs, Arkansas.

Shelby Terry - Direct

Q. What's your job there?

A. I'm a criminal investigator for the Garland County Sheriff's Office.

Q. And were you employed as a criminal investigator for the Garland County Sheriff's Office in November of 1994?

A. Yes, I was.

Q. Well, tell the jury what is your career in law enforcement, sir. What -- what's your career in law enforcement? Where did you start, how did you move through the ranks?

A. I've been with the sheriff's office there for 13 years.

Q. And what sorts of jobs have you done for the sheriff's office?

A. Started out as a radio operator, went to patrol, and then went to CID.

Q. Now, sir, I notice you have in front of you a folder. Is that your offense record, your offense folder?

A. Yes. It's my criminal case file.

Q. And to your knowledge, has that folder been furnished to the parties in this case?

A. Yes.

Q. I'm going to ask you, if you can, to answer our questions today from your own memory of events; but if you need to

consult something to reerresh your recollection, just indicate, if that's all right with the Court, and let us know that you're doing it. Okay?

Shelby Terry - Direct

A. Yes, sir.

Q. All right. I want to direct your attention to the 5th of November, 1994. Do you remember what day of the week that was?

A. I believe it was a Saturday.

Q. Were you on duty that day?

A. No, sir.

Q. Did you get a call that day asking you to go do something?

A. Yes, sir.

Q. About what time did you get the call?

A. Approximately 11:35 a.m.

Q. Where were you at that time?

A. My residence.

Q. Where did you go?

A. To Roger Moore's residence in Royal, Arkansas.

Q. And had you ever been out there before?

A. No, sir.

Q. Did you ever -- had you met Mr. Moore before?

A. No, sir.

Q. And where -- who called you? Was it Mr. Moore, or was it somebody else?

A. Our dispatcher in the sheriff's office.

Q. Now, when you got there to Mr. Moore's residence, who was there?

A. One of our patrol deputies and Mr. Moore.

Q. Now, in terms of that -- were you informed that a robbery

Shelby Terry - Direct

had taken place?

A. Yes, sir.

Q. Now, in terms of that crime scene, who was in charge of the investigation?

A. When I arrived, I would be.

Q. Now, you say one of your deputies was there. Who was that?

A. Ronald Karchefski.

Q. And was Mr. Moore there?

A. Yes.

Q. And was Nichols there?

A. Not that I'm aware of.

Q. Now, did you interview Mr. Moore about what he said had happened to him?

A. Yes.

Q. Did he tell you that there were at least two suspects involved in the robbery?

A. No, sir.

Q. Do you remember being interviewed by Mr. Leeds back in December of '96?

A. Yes.

... 100.

Q. What did Mr. Moore say about how many people had robbed him?

A. He told me that he saw one person. That was the one that confronted him; and when he was tied up and blindfolded, he had a suspicion there might have been a second person.

Shelby Terry - Direct

Q. So he did -- what did he say about that second person; that he had a suspicion?

A. He had a suspicion or a feeling there might have been a second person there.

Q. And did he say that he had been restrained in a particular way?

A. Yes, sir.

Q. How did he say he had been restrained?

A. With either wire ties or what we refer to as "flex cuffs" and then also duct tape.

Q. Now, did he show you something that looked like these flex cuffs?

A. Yes.

Q. And were they the kind of flex cuff used by police departments?

A. No, sir.

Q. How did they differ from the kind used by police departments?

A. They're smaller, thinner.

Q. What would they be more like? If I were going to go shop for something like that, how would I describe it?

A. Wire ties.

Q. Like wire ties? And -- like those plastic things that you can buy at -- a hook to tie batches of cable --

A. Yes.

Shelby Terry - Direct

Q. -- together -- at a hardware store?

Now, after you interviewed Mr. Moore, did you conduct some further investigation away from his house?

A. Yes.

Q. And where did you go?

A. We started searching the area for his van and located his van in a wooded area behind his residence.

Q. Did you find his van?

A. I did not, no, sir.

Q. Did there come a time when you went to his van that had been found?

A. Yes, sir.

Q. About how long after your first response to the scene was that?

A. Approximately two hours.

Q. Did you search the van?

A. Yes.

Q. Had Mr. Moore provided guidance to you on what to look for

in the van?

A. He told me that the serial numbers on the guns should be inside the van.

Q. Did he tell you where inside the van they should be?

A. Yes.

Q. What did he tell you?

A. On a shelf above a sink or cabinet that was inside the van.

Shelby Terry - Direct

Q. Was this van hooked up -- kind of a camper-type van?

A. Yes.

Q. All right. Now, did you look in the place where he had said they would be?

A. Yes.

Q. What did you find?

A. Money.

Q. He had told you there would be money there?

A. No, sir.

Q. And did you find any serial numbers?

A. No, sir.

Q. Did you do a more complete search of the van?

A. Yes, sir.

Q. And I'm going to show you now what's been received in evidence as Defendant's 1549. Did you find that?

A. Yes, sir.

Q. Where did you find that?

A. It was inside the van.

Q. Now, this is -- And did it have all this writing on it: "Federal agent is my name. Killing women and children is my game. I'm from the Government. I'm here to help you"?

A. Yes.

Q. In fact, this is a copy of the original that you have in your offense folder?

A. Yes.

Shelby Terry - Direct

Q. Now, where did you find this item?

A. It was in the back of the van underneath the bunk or bed.

Q. Did you ever ask Mr. Moore about this item?

A. No, sir, I didn't.

Q. Now, in the process of interviewing Mr. Moore, did he give you the names of people that he thought had been involved here?

A. Later on, yes, sir, he started calling me with names.

Q. And when was that, sir?

A. Within a couple weeks.

Q. Now, did he describe for you what the person he said had robbed him had said to him?

A. Yes, sir.

Q. Did he tell you what he had said to that person?

A. Yes, sir.

Q. What did he say he had said to that person?

A. When he was confronted, he asked the subject if he was a

federal agent from the ATF.

Q. Did he say whether this person answered?

A. No, sir, he didn't.

Q. Now, you said he gave you some names. Correct?

A. Yes, sir.

Q. Was one of the names he gave you Tim McVeigh?

A. Yes, sir.

Q. And did he tell you where Tim McVeigh could be contacted?

A. He told me that he knew he was from New York. He was also

Shelby Terry - Direct

out of Fort Riley, Kansas, and he was in Desert Storm.

Q. Is -- and that's all he told you about him?

A. Yes.

Q. And did he tell you that Mr. McVeigh had an address in Kingman, Arizona?

A. No, sir.

Q. Did you rely on that, what Mr. Moore told you, in an attempt to locate Timothy McVeigh?

A. Yes, sir.

MR. TIGAR: Thank you very much, Detective.

I have no further questions.

THE COURT: Ms. Wilkinson?

MS. WILKINSON: Yes.

CROSS-EXAMINATION

BY MS. WILKINSON:

Q. Good afternoon, sir. It's Sergeant Terry. Correct?

A. Correct.

Q. You went out to investigate Roger Moore's robbery on November 5, 1994?

A. Yes.

Q. And when you got there, Mr. Moore was already at his house with one of your deputies. Is that right?

A. Yes, ma'am.

Q. You don't recall seeing any other people there?

A. No, ma'am.

Shelby Terry - Cross

Q. Did you see Mr. Powell back in the witness room?

A. Just now?

Q. Yes.

A. Yes.

Q. Did you see him at Roger Moore's house on November 5, 1994, that morning?

A. I don't remember seeing him there.

Q. Now, do you recall exactly when you arrived at Mr. Moore's house?

A. Shortly after noon.

Q. And you did that in response to a radio call from your headquarters?

A. From a telephone call.

Q. And were you informed that someone had called in to say

Q. And were you informed that someone had called in to say there had been a robbery at Mr. Moore's house?

A. Yes.

Q. Mr. Moore told you what happened that day?

A. Yes.

Q. He told you that there had been a man with a shotgun outside his house?

A. Yes.

Q. That attached to the shotgun was a garrote wire?

A. Yes.

Q. And he told you that the man, the robber who was carrying that shotgun, was wearing a ski mask?

Shelby Terry - Cross

A. That's correct.

Q. And he told you that the man was wearing camouflage fatigues?

A. Yes.

Q. That he had light boots on?

A. I'm sorry?

Q. Light-colored boots on?

A. Yes.

Q. And that he was wearing gloves?

A. Yes.

Q. Mr. Moore also told you back on November 5, 1994, that he had been duct-taped; is that right?

A. Yes.

Q. You found that duct tape, didn't you?

A. Yes.

Q. You took custody of the search -- the shirt Mr. Moore was wearing and the duct tape?

A. Yes.

Q. You sent it to your laboratory for evaluation?

A. Yes.

Q. Found no prints on there, did you?

A. No, there was no prints.

Q. That would be consistent with someone wearing gloves, wouldn't it?

A. Yes.

Shelby Terry - Cross

Q. And you also found some ties that Mr. Moore told you about; correct?

A. Wire ties, yes.

Q. You found those in his house?

A. Yes.

Q. And you seized those?

A. Yes.

Q. And you took them into custody as part of your investigation?

A. Yes.

Q. And you've looked at those ties, haven't you?

A. Yes.

Q. And would they bind somebody if they were wrapped around their wrists or their ankles?

A. Yes.

Q. Mr. Moore also told you that day that he had managed to get a penknife off his table and was able to cut himself free; isn't that right?

A. A knife. He just had a small knife. I'm not sure if it was a penknife.

Q. And it was near him in the living room?

A. Yes.

Q. And he told you that back on November 5, 1994; correct?

A. Yes.

Q. Now, on the day of the robbery, he also told you that items

Shelby Terry - Cross

had been taken from his house; right?

A. Yes.

Q. Told you guns?

A. Yes.

Q. Ammunition?

A. Yes.

Q. Other valuables?

A. Yes.

Q. And did he provide you with a list of all the items that were stolen from his house?

A. Yes.

Q. And did he do that the next working day or try to do that the next working day after the robbery?

A. He gave me a short list that day, and within a couple days I had a big list.

Q. Did he revise that longer list to give you a more complete list?

A. Yes.

Q. He provided that to you?

A. Yes.

Q. And is that based on your experience with robbery victims -- is that consistent that people would update their list of items stolen?

A. Yes.

Q. Why is that?

Shelby Terry - Cross

A. They notice something else missing they didn't notice that day.

Q. You didn't see anything unusual about that?

A. No.

Q. Now, after the robbery, did Mr. Moore and Ms. Anderson contact you?

A. Yes.

Q. Did they contact you a lot?

A. Yes.

Q. All the time?

A. Yes.

Q. A couple times a week?

A. Yes.

Q. Were they constantly asking you about the status of the robbery investigation?

A. Yes.

Q. Did they provide names to you of the people they thought had visited their home?

A. Um --

Q. Did they provide names to you of people they thought could be involved, people who had visited their home?

A. Yes.

Q. And did they provide the name of Timothy McVeigh on two different occasions?

A. Yes.

Shelby Terry - Cross

Q. You wrote that down in your notes, didn't you?

A. Yes.

Q. Those notes were in the file that you brought today?

A. Yes.

Q. And you wrote it down on your own, did you not?

A. Yes, ma'am.

Q. In other words, you didn't ask Mr. Moore or Ms. Anderson to spell it?

A. No.

Q. So if it's spelled M-C-V-E-Y, that was just your spelling of the name. Correct?

A. Yes, ma'am.

Q. And at that time back on November 5, 1994, you didn't know who Mr. McVeigh was; correct?

A. No.

Q. And you received all this information from Roger Moore long before the bombing in Oklahoma City; correct?

A. Yes.

Q. And you investigated this case as a robbery, did you not?

A. Yes.

Q. And you've never stopped doing that, have you?

A. No.

MS. WILKINSON: No further questions.

REDIRECT EXAMINATION

BY MR. TIGAR:

Shelby Terry - Redirect

Q. Deputy, you were asked on cross-examination about whether you -- it was unusual for people to update their list; right? Do you remember that?

A. Yes.

Q. Okay. Were there unusual things? Were there things about Mr. Moore's behavior that you did find unusual?

A. I'm not for sure what you mean, sir.

Q. Well, did he tell you when you first got on the scene who he thought was responsible?

ne thought was responsible?

A. No.

Q. Do you remember telling Mr. Leeds that he told you when you got on the scene that the ATF was responsible?

A. Excuse me. Yes, sir. He did say -- I mean, asked him about if he was a federal agent. I did not quite understand what you meant, but --

Q. Okay. Well, you tell me: Was this an unusual conversation to be having with somebody at a robbery scene?

A. Well, yes, sir, it was.

Q. Would you tell us what happened then. Tell us what you said and what he said.

A. For him saying that he asked me if it was a federal agent, it was unusual, yes, sir.

Q. And did you -- did you become aware that Mr. Moore had later made accusations about members of your department?

MS. WILKINSON: Objection, your Honor.

Shelby Terry - Redirect

THE COURT: Sustained.

BY MR. TIGAR:

Q. Did you ask Mr. Moore where Ms. Anderson was?

A. No, I didn't.

Q. Did he tell you where she was?

A. I don't believe so.

MR. TIGAR: I have no further questions. Thank you.

MS. WILKINSON: Just one more. A couple, I should say.

THE COURT: All right.

REXCROSS-EXAMINATION

BY MS. WILKINSON:

Q. You were just asked by Mr. Tigar about an interview with a man named Mr. Leeds. Do you know who that is?

A. That's one of his investigators.

Q. And you've cooperated with the defense and told them what you know about this?

A. Yes.

Q. Is that right?

MS. WILKINSON: No further questions.

MR. TIGAR: Thank you.

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

MR. TIGAR: Verta Powell, your Honor.

THE COURT: All right. Ms. Powell.

THE COURTROOM DEPUTY: She's not here.

THE COURT: Well, I guess we've had a failure of communication.

MR. TIGAR: I'm sorry. Mr. John Brown then, your Honor. If we can -- we won't waste the time.

THE COURT: Okay. Good.

MR. TIGAR: We can resume. Thank you.

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

(John Brown 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 H. Brown, Jr., B-R-O-W-N.

THE COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. TIGAR:

Q. What is your business or occupation, Mr. Brown?

A. I'm chief of police of Alexander, Arkansas.

Q. And where is Alexander, Arkansas?

A. Alexander, Arkansas, borders the west city limits of Little Rock, Arkansas.

Q. How long have you been chief there?

A. Two years and three months, sir.

Q. Well, going back to the fall of 1994, what was your

John Brown - Direct
business at that time?

A. Prior to October of '95 -- October, 1995 -- you did say '94, sir?

Q. Yes. So I'm getting into that time frame.

A. During that time frame, I was working for attorneys in a consulting business and private investigation business, sir.

Q. Now, before you did your private investigation business, had you been in law enforcement?

A. Yes, sir. That's correct.

Q. What did you do in law enforcement before that?

A. Homicide detective, criminal investigator, street patrol, dispatcher. I worked my way up through the ranks, sir.

Q. Did you -- have you ever had a conversation with Roger Moore?

A. Yes, sir.

Q. And how did you come to have that conversation with Roger Moore?

A. An acquaintance of mine, an elderly lady, had contacted me and told me of a neighbor of hers that had been robbed or burglarized, and she wanted me to visit with him on the phone. And he was wanting to hire a private investigator. And that's what led to the conversation.

Q. Did he say -- and did you talk to him on the phone?

A. Yes, sir, I did.

Q. Did he say why he wanted to hire a private investigator?

John Brown - Direct

A. He felt like that as a victim he was not being treated fairly by the sheriff's department. He said no one was working on his case. He went so far as to say that he suspected that maybe someone from the sheriff's office may have been involved in the burglary or robbery itself.

Q. And did you agree to accept the job of working for Mr. Moore, or did you not accept it?

A. No, sir. My plate was full, and I explained that to Mr. Moore. Besides, it was an ongoing criminal investigation

by the Garland County sheriff's office. Therefore, you know, in a criminal investigation sometimes --

Q. Without -- I don't want to get into the detail.

A. I understand.

Q. I just --

A. No, sir. I did not take the case.

MR. TIGAR: Thank you. No further questions.

THE COURT: Any cross-examination?

MS. WILKINSON: No questions, your Honor.

THE COURT: All right. I take it he's excused.

MR. TIGAR: Yes, he's excused.

THE WITNESS: May I be excused, sir?

THE COURT: Yes. You can go back.

We'll -- unless you've got a 2-minute witness --

MR. TIGAR: That's as quick as I can do it, when I

did

this, your Honor. I can't do any better.

THE COURT: We'll recess, then, members of the jury.

One thing that I might mention here because it came

up

this afternoon and it's happened earlier in the case where there was a motion to strike, it's called, and I said you'll have to disregard something that was said. Please understand, of course, that the witnesses who come in here are not lawyers, not skilled in the rules of evidence; and as you've seen, sometimes they answer something that doesn't match the question, or they volunteer something. And when that happens, you know, as it does -- as I've said to you before, trials are human events; we deal with human beings. So when I say to you that you must disregard it or strike it, that's exactly what you must do. And you know, that seems at first to be hard to do: It's something that you heard. But again, when I say to disregard it, that's exactly what I mean, in the same fashion as if during the course of the trial you remember something that you read somewhere before you ever got selected on the jury.

And as we explored with you at great length during the time that you were being questioned about becoming a juror in this case, anything that is outside the evidence has to be set

aside and not considered; and that's the same thing when I caution you or instruct you to disregard something said.

And, of course, as I'll tell you in greater detail when we do the full instructions, remember always that the questions are not the evidence. The questions that are put by lawyers are not the evidence. The answers are the testimony, and it's the answers. Of course, the answers go with the questions; but the answers are what you consider as testimony in the case.

And if it should come about, as it sometimes does, where the question suggests some fact but the answer is different than that, you don't accept some fact stated in a question as being evidence. It's what the witnesses say that we rely on.

I just thought I'd bring that to your attention now,

again as a part of instructing you about your role in this case.

And, of course, now I'm excusing you until 8:45 tomorrow morning; and during this time I again instruct you, as I must, to keep open minds.

We're moving right along, but there is a ways to go. You'll be hearing a lot more. Wait till you've heard it all before you even in your own minds come to think of what you believe has been proved or not proved in the case. And avoid discussion with all others about the trial, and avoid anything that may appear in newspapers, magazines, publications of any type, radio, television, and the whole thing, remembering you have to decide about this case based on what you hear and see in this room.

You're excused till 8:45 tomorrow morning.

I understand the sun has been out today, so the drive home ought to be better.

(Jury out at 5:02 p.m.)

THE COURT: Okay.

MR. MACKEY: May we approach very briefly?

THE COURT: Yes.

(At the bench:)

(Bench Conference 104B3 is not herein transcribed by court order. It is transcribed as a separate sealed transcript.)

(In open court:)

THE COURT: All right. Recess.

(Recess at 5:05 p.m.)

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DEFENDANT'S EXHIBITS

Exhibit	Offered	Received	Refused	Reserved	Withdrawn
D1098	12312	12312			
D1101	12310	12310			
D1102	12310	12310			
D172	12268	12268			
D1732					
D1760	12312	12312			
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D603	12301	12301			
D603A	12302	12302			

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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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