

## **Defense cites many faces of John Doe**

### **Lawyers for Nichols suggest mystery man aided McVeigh**

Dallas Morning News, The (TX)

December 4, 1997 | Bruce Tomaso, Victoria Loe | Page: 1A | Section: NEWS

DENVER - John Doe 2 is tall. That is, unless he's short.

He's either white or olive-skinned. His hair is bushy and down to his shoulders, or it's cropped military style.

He's stocky. He's slender. He's of medium build.

And the people who say he was with Oklahoma City bomber Timothy McVeigh when the bomb truck was rented can't remember what he looks like at all.

On Wednesday, the second day of their defense, lawyers for Terry Nichols continued to suggest that John Doe 2, and not their client, was Mr. McVeigh's true accomplice. They offered up a host of JD2 sightings, as witness after witness described seeing someone who resembled the swarthy man depicted in an FBI sketch widely circulated in the days after the bombing.

The problem, legal analysts say, is that few of the sightings appeared to involve the same man. The defense witnesses often contradicted their earlier statements to the FBI, or contradicted one another, or contradicted other evidence heard earlier by the jury in Mr. Nichols' murder and conspiracy trial.

"These witnesses seem to have seen John Doe 2 everywhere, and in a wide variety of sizes and shapes," said Jeffrey Toobin, an author and former federal prosecutor who is covering the bombing trial for The New Yorker and ABC News. "That presents a real credibility problem for the defense.

"If they come up with too many conflicting theories about John Doe 2, they run the risk of looking ridiculous in front of the jury. " The government contends that Mr. Nichols helped plan the terrorist attack and build the 2-ton truck bomb that his Army pal, Mr. McVeigh, delivered to the Alfred P. Murrah Federal Building on April 19, 1995. One-hundred sixty-eight people, including eight federal agents and 19 children, were killed in the explosion. Mr. McVeigh was convicted by a different jury earlier this year and sentenced to death.

Mr. Toobin noted that the defense doesn't have to prove anything; that burden rests with the government. All lead defense lawyer Michael Tigar and his team need do is plant a reasonable doubt about Mr. Nichols' guilt in the mind of one or more jurors.

One way to attempt that is to show that someone, anyone, other than Mr. Nichols was Mr. McVeigh's cohort.

Wednesday's cavalcade of John Doe encounters began with Eldon Elliott, the owner of the Junction City, Kan., body shop where Mr. McVeigh rented the Ryder truck used to carry the bomb.

Mr. Elliott, who testified for the prosecution in Mr. McVeigh's trial, told jurors that Mr. McVeigh was accompanied by a second man. However, Mr. Elliott said, he only glanced at the second man.

The only thing he recalls, Mr. Elliott told prosecutor Geoffrey Mearns on cross-examination, was the man's baseball hat: white with blue zig-zag stripes.

That hat was depicted on one of the sketches of a suspect distributed worldwide after the bombing.

The government now contends that the man with the hat wasn't with Mr. McVeigh at all but came into Elliott's Body Shop the next day. The man, an Army private who has been cleared of any involvement in the bombing, wore a Carolina Panthers cap similar to the one Mr. Elliott described. He was with another soldier who looks something like Mr. McVeigh.

Mr. Mearns reminded Mr. Elliott that, when he was first interviewed by an FBI agent a few hours after the bombing, he said Mr. McVeigh was alone when he rented the truck.

"I don't recall telling him that," Mr. Elliott responded.

Other witnesses claimed sharper memories, but often those memories became fodder for the prosecution.

Jeff Davis, who delivered Chinese food to Mr. McVeigh's Junction City motel room the Saturday evening before the bombing, said the man in the room was not Mr. McVeigh. He said the customer was white, with brown hair, about 6 feet tall and had a slender build.

Prosecutor Larry Mackey grilled Mr. Davis mercilessly, suggesting that he had concocted a description of the man to satisfy journalists after telling the FBI he could not remember the person's face.

Despite his insistence that the man was not Mr. McVeigh, "you have very little specific recall of the customer's facial features," Mr. Mackey fairly snarled at Mr. Davis.

"Yes," the witness said very quietly.

Mr. Mackey kept on, implying that Mr. Davis' first account to the FBI - of a tall, slender, clean-cut white man - could easily describe Mr. McVeigh himself.

In fact, Mr. Mackey suggested, Mr. Davis had once confided to a sketch artist hired by a TV station to probe his memories that Mr. McVeigh had been in the motel room.

"I emphatically deny that," Mr. Davis retorted.

Mary Martinez, a hospital nurse from Junction City, got much the same treatment. She testified that she had seen Mr. McVeigh the Monday before the bombing, shortly after 8 a.m., in downtown Junction City. He was driving a Ryder truck, she said, and was accompanied by a very short, dark-skinned, mustachioed man whose bushy hair came almost to his shoulders.

Prosecutor Patrick Ryan expressed incredulity at Ms. Martinez's testimony, especially her statement that the passenger in the truck was able to stand up in the cab without stooping.

"He didn't have to crouch?" he said.

"No," she replied.

Ms. Martinez also acknowledged under cross-examination that she originally told the FBI that the driver of the truck had very light red hair. Mr. McVeigh is blond. And she waffled about whether the truck said "Ryder" on the outside.

Although Mr. Ryan did not point it out, jurors had already heard from another defense witness who said she had seen a dark, well-built man near a Ryder truck at Mr. McVeigh's motel - on the same day at the very same time.

That witness, motel maid Hilda Sostre, testified that Mr. McVeigh was in his room at the time.

In any case, neither the truck Ms. Martinez saw downtown nor the one Ms. Sostre saw at the motel could have been the bomb truck; Mr. McVeigh did not rent it until late that afternoon.

Estella Weigel, a health-care technician, said that on the morning before the bombing she saw a Ryder truck with two men in it on a highway more than an hour from Junction City. She said it was trailing a beige car that "reminded me of my sister's '78 Mercury." Mr. McVeigh owned a yellow 1978 Mercury Marquis.

The driver of the car, she said, "looked similar to the sketch that came out of John Doe No. 2." Her testimony - to the degree that it suggested Mr. McVeigh was in the caravan - contradicted Mr. Nichols' own statements to the FBI. Interviewed two days after the bombing, he told agents he met Mr. McVeigh at a McDonald's in Junction City that morning and loaned him his blue pickup.

In other testimony Wednesday, the defense began building its case that, in the spring of 1995, Mr. Nichols was, in Mr. Tigar's words, "building a life, not a bomb. " A Kansas welder testified that Mr. Nichols had asked him to design a canoe trailer for him. Several people spoke of encountering Mr. Nichols at gun shows, where, they said, he sold weapons and military surplus items. An employee of a military surplus store in Herington, Kan., the town where Mr. Nichols was living, said the defendant had inquired about trading some picks and shovels for a load of shingles.

The defense also took aim at the prosecution's contention that Mr. Nichols robbed Arkansas gun collector Roger Moore to help finance the bombing plot. Mr. Tigar has said loudly and often that the alleged robbery was a hoax, cooked up by Mr. Moore and his friend Mr. McVeigh to defraud Mr. Moore's insurance company.

However, the witnesses called by the defense Wednesday - a neighbor of Mr. Moore's and a sheriff's investigator - testified that Mr. Moore had consistently said he was robbed at shotgun-point by a black-masked intruder.

It was unclear whether their testimony was any help to the defense.