

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO
3 Criminal Action No. 96-CR-68
4 UNITED STATES OF AMERICA,
5 Plaintiff,
6 vs.
7 TERRY LYNN NICHOLS,
8 Defendant.

ff

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10 REPORTER'S TRANSCRIPT
 (Trial to Jury: Volume 95)

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ff

12 Proceedings before the HONORABLE RICHARD P.
MATSCH,
13 Judge, United States District Court for the District of
14 Colorado, commencing at 8:45 a.m., on the 28th day of
November,
15 1997, in Courtroom C-204, United States Courthouse,
Denver,
16 Colorado.

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24
Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
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P.O. Box 3563, Denver, Colorado, 80294, (303)

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1 APPEARANCES
2 PATRICK RYAN, United States Attorney for the
Western
3 District of Oklahoma, 210 West Park Avenue, Suite 400,
Oklahoma
4 City, Oklahoma, 73102, appearing for the plaintiff.
5 LARRY MACKEY, BETH WILKINSON, GEOFFREY MEARNES,
and
6 AITAN GOELMAN, Special Attorneys to the U.S. Attorney
General,
7 1961 Stout Street, Suite 1200, Denver, Colorado, 80294,
8 appearing for the plaintiff.
9 MICHAEL TIGAR, RONALD WOODS, and JANE TIGAR,
Attorneys
10 at Law, 1120 Lincoln Street, Suite 1308, Denver,
Colorado,
11 80203, appearing for Defendant Nichols.
12 * * * * *

13 PROCEEDINGS

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

15 THE COURT: Be seated, please.

16 Counsel approach, please.

17 (At the bench:)

18 (Bench Conference 95B1 is not herein transcribed by
court

19 order. It is transcribed as a separate sealed
transcript.)

20

21

22

23

24

25

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1 (In open court:)

2 MR. TIGAR: May I just have a moment to let my
3 colleagues know what --

4 THE COURT: Yes.

5 All right. Bring in the jury.

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

7 THE COURT: Members of the jury, good morning.

8 JURORS: Good morning.

9 THE COURT: We're ready to resume our trial
and call

10 for the Government's next witness.

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

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

13 your Honor.

14 THE COURT: Excuse me.

15 Mr. Wilson, you'll return to the witness stand
under

16 the oath earlier taken.

17 THE WITNESS: Thank you.

18 (Alton Wilson was re-called.)

19 THE COURT: All right, Mr. Tigar.

20 MR. TIGAR: Thank you, your Honor.

21 CROSS-EXAMINATION CONTINUED

22 BY MR. TIGAR:

23 Q. Good morning, Agent Wilson.

24 A. Good morning.

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

11180

Alton Wilson - Cross

1 parking lot.

2 A. That is correct, sir.

3 Q. And we're going to keep on talking about that
parking lot

4 but not much longer.

5 A. Okay.

6 Q. I would like to show you now the -- a portion of
what's

7 been admitted as Exhibit E89 -- Defense Exhibit E89.
And that,

8 we were talking about on Wednesday. That's the diagram
of the

9 parking lot. Correct, sir?

10 A. Yes, sir.

11 Q. And that diagram has these boxes we established
that

12 represent automobiles; correct?

13 A. That is correct, sir.

14 Q. Now, that diagram was prepared by Special Agent
Lester. Is

15 that your understanding?

16 A. That was not my understanding.

17 Q. Okay. Well, who is it your -- who, according to
your

18 understanding, prepared the parts of the diagram that
did not

19 include the evidence-recovery numbers?

20 A. I was not aware of the individual who prepared the
diagram.

21 I didn't look at the author's name on the diagram.

22 Q. All right. So when you received the diagram
without the

that 23 evidence-recovery numbers on it, all of these boxes
24 indicate cars were already on it. Is that right?
25 A. That is correct, sir.

11181

Alton Wilson - Cross

1 Q. And all of this information down here in the
legend, RP1,
2 RP2, RP3: That was already on it. Correct?
3 A. I believe that would be correct, sir.
4 Q. And was that handed to you to help you in your
search
5 process?
6 A. It was, sir.
7 Q. And from whom did you receive it?
8 A. I do not recall who that individual was who gave it
to me.
9 Q. Somebody that was in charge of the search teams.
Is that
10 fair to say?
11 A. Yes, sir.
12 Q. And then you put on here all of the numbers that
are not in
13 the boxes. Correct?
14 A. That is correct, sir.
15 Q. And we established on Friday that there is no
number to

16 Item 06. Correct?
17 A. That is correct.
18 Q. Now, when you were doing this evidence-recovery
process,
19 were you wearing gloves?
20 A. I was not, sir.
21 Q. Was Mr. Kelly, to your -- as far as you could see
--
22 wearing gloves?
23 A. Yes, he was, sir.
24 Q. What kind of gloves were those?
25 A. I do not recall the exact kind of gloves that Mr.
Kelly was

11182

Alton Wilson - Cross

1 wearing.
2 Q. Were they -- I'm sorry? Didn't mean to interrupt
your
3 answer.
4 Were they latex gloves, or cloth gloves?
5 A. Again, I do not recall the exact kind.
6 Q. Uh-huh. Did -- during the -- any of the searches
that you
7 conducted, did you wear latex gloves?
8 A. In this parking lot?
9 Q. At any time.

10 A. Yes.

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

12 furnished?

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

14 on hand.

15 Q. And were the gloves that you got out of a box of
gloves

16 that looked like you could buy in a drugstore, or do
you know?

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

18 Q. Were the gloves lined; that is to say, did they
have a

19 powder inside them so that they could be taken on and
off more

20 easily?

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

22 Q. Did you happen to notice the -- do you know what
the

23 difference is between gloves that have a powder inside
them and

24 those that don't?

25 A. Not really, sir.

11183

Alton Wilson - Cross

1 Q. So you're not aware of what's placed inside of
gloves to

2 make them easier to get on and off. Is that true?

3 A. That is correct, sir.

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

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

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

8 There we are.

9 You testified on Wednesday that you didn't
take

10 pictures. Is that right?

11 A. That's correct.

12 Q. Who took pictures?

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

14 the pictures.

15 Q. Now, did you make up -- did you write up a log of
the

16 pictures that were taken?

17 A. Yes, I did.

18 Q. Okay. I'm going to show you what has been marked
as

19 Defendant's Exhibit E5 and ask -- I'm going to turn to
the

20 first page inside the cover and ask if that's your
handwriting?

21 A. Yes, it is, sir.

22 Q. And your signature. Correct?

23 A. That is correct, sir.
24 Q. But none of the -- will you just look through there
and
25 make sure that nothing else in there represents either
a

11184

Alton Wilson - Cross

1 picture that you took or your handwriting.
2 A. Okay. I've reviewed each of these photographs.
3 Q. And what I've just shown you, that first page there
is the
4 only thing that's in your handwriting. Correct?
5 A. That is correct, sir.
6 Q. All right. And you didn't take any of these
pictures --
7 A. That's correct, sir.
8 Q. -- is that correct?
9 Now, were you furnished at the time of the
search a --
10 an item location form to fill out?
11 A. That, I'm not certain. Can you describe it a bit
further
12 for me?
13 Q. Sure. Let me put it up here. It's marked as page
007 just
14 with our own Bates' stamp numbering of what's been
received as
15 E89. Do you see that item location form?

16 Do you remember that being a part of the
packet of

17 materials that you were furnished at the time?

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

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

20 Correct?

21 A. That is correct, sir.

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

23 MR. TIGAR: Yes, it is, your Honor. It is
Bates' page

24 007 of what's been marked as E89.

25 THE COURT: Thank you.

11185

Alton Wilson - Cross

1 BY MR. TIGAR:

2 Q. Now, we did talk on Wednesday about the evidence-
recovery

3 log. Correct?

4 A. Yes, sir.

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

6 A. That is correct, sir.

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

8 A. That is correct.

that 9 Q. And you wrote "yes," "no," and so on and filled in

10 column. Correct?

11 A. That is correct.

a "no," 12 Q. Now then, down here, there is an item and there is

13 but there is an asterisk. Correct?

14 A. That's correct, sir.

Do you 15 Q. And at the bottom, we see "Photo of Object Taken."

16 see that?

17 A. Yes, sir.

18 Q. When were the asterisks put in?

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

20 Q. And when was that?

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

an 22 Q. So at first you wrote "no" on some and then you put

23 asterisk. Correct?

24 A. That is correct.

25 Q. Why did you do that?

11186

Alton Wilson - Cross

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

at it. 2 Q. I'll give you your whole form so that you can look

Bates' 3 And then what we were looking at, sir, is this
evidence 4 page 3; and those are our numbers, you know, for
5 purposes.

6 A. Okay.

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

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

13 THE COURT: You're asking about all asterisks.

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

17 THE COURT: I understand.

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

22 BY MR. TIGAR:

23 Q. So that when we see an asterisk, we see that only
refers to
24 the fact that the swabbing wasn't photographed but the
metal
25 frame --

11187

Alton Wilson - Cross

1 A. That's correct.

2 Q. -- was. Is that right?

3 A. That's correct, sir.

4 Q. Okay. All right. Now, let me put this up so we
can

5 explain to the jury what we've just been talking about.

6 A. All right, sir.

7 Q. I'll put back up this page and zoom out. For
example, 06

8 says yes, a picture was taken. Correct?

9 A. That's correct, sir.

10 Q. But then 07 says "dry swabbing of metal frame," and
it says

11 "no," but then it says "photo of object taken." That
means

12 that you did take a picture of the object from which
you took

13 the swabbing but you didn't a take a picture of the
swab

14 itself. Correct?

15 A. That's correct, sir.

16 Q. And these entries were made at or about the time
you were

17 doing your search; correct?

18 A. That's correct, sir.

19 Q. Now, I'm going to show you finally what has been
received

20 in evidence as Government's Exhibit 736 and ask you to
take

21 note of the pink paint around it. Do you see the pink
circle

22 there?

23 A. Yes, I do, sir.

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

25 picture?

11188

Alton Wilson - Cross

1 A. Yes, I do.

2 Q. That's Linda Vernon; right?

3 A. That's correct, sir.

4 Q. Now, does -- were there pink paint, like circles,
in the

5 parking lot on the 21st when you were searching it?

6 A. I do recall seeing some, sir.

7 Q. Do you know who placed -- did they appear to be
spray

8 painted circles?

9 A. That, I cannot tell, sir.

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

11 A. I do not, sir.

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

14 A. Not that I recall, sir.

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

16 A. That's correct.

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

18 THE COURT: Ms. Wilkinson.

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

20 Thank you, your Honor.

11189

Alton Wilson - Redirect

1

REDIRECT EXAMINATION

2 BY MS. WILKINSON:

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

6 A. That is correct.

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

9 A. That is correct.

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

13 A. That is correct.

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

15 A. Yes, I did.

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

18 THE COURT: Thank you.

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

21 BY MS. WILKINSON:

22 Q. Now, let's go down the list here, Mr. Wilson, down
to

23 CT-4/21-06. Is that the item we've been talking about?

24 A. Yes, it is.

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

11190

Alton Wilson - Redirect

1 A. The date.

2 Q. Of the recovery?

3 A. That is correct.

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

5 A. That is correct.

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

7 A. Yes.

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

9 A. That is correct.

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

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

12 Q. All right. And next to whether it was photographed
or not,

13 what did you indicate?

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

15 Q. And that is the piece that you examined,
Government's

16 Exhibit 664 that was in front of you on Wednesday?

17 A. Yes, it is.

18 Q. Now, just to assist the jury -- it's not in
evidence yet,

19 but it's going to be described by other witnesses. Can
you

20 describe what 664 looks like?

21 A. Yes, I can.

22 Q. Tell us what the front looks like.

23 A. The front is yellow and red in color. The back is
wood,

24 and it appears to have come from the box panel of the
Ryder

25 truck.

11191

Alton Wilson - Redirect

1 Q. And on the bag, is there an indication of the
number -- the

2 item number on it?

3 A. Yes, there is.

4 Q. What does it say?

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

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

8 A. That is correct.

9 Q. So the only thing you didn't do was put it on that

diagram.

10 Is that right?

11 A. That is correct.

12 Q. And it was photographed in place?

13 A. Yes, it was.

14 Q. Now, you were also asked about the photo log. And
again

15 just let me use the Defense Exhibit E5. You just
looked at

16 that. Correct?

17 A. Yes.

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

19 marked --

20 MR. TIGAR: Excuse me, your Honor.

21 THE COURT: It's not evidence.

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

23 THE COURT: It's not in evidence.

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

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

11192

Alton Wilson - Redirect

1 other than what he wrote have not been authenticated,
your

2 Honor.

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

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

8 MS. WILKINSON: That's fine.

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

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

13 MS. WILKINSON: We do.

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

16 MS. WILKINSON: Yes.

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

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

23 MS. WILKINSON: I think that will be easier.
There is
24 a page number. I'll say Defense Exhibit E5, page 3.
25 MR. TIGAR: That's acceptable.

11193

Alton Wilson - Redirect

1 BY MS. WILKINSON:
2 Q. With those limitations, Mr. Wilson, let's look at
page 3.
3 This is your handwriting. Is it not?
4 A. Yes, ma'am.
5 Q. And up at the top, can you just tell the jury what
that
6 says?
7 A. Yes. It says "21st April '95, photograph log of
search
8 conducted at parking garage located across from blast
site."
9 Q. Now, you say "parking garage" there. That is the
same
10 parking lot that you've described to the defense and
described
11 to us?
12 A. Yes, it is.
13 Q. Now, starting at the beginning, you have Frame No.
1. Is
14 that right?

15 A. That is correct.

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

17 A. I do not.

18 Q. Do you know whether this was Frame No. 1 on the
roll, or

19 was this the first picture you wrote down?

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

21 Q. So if we were to look through the photographs in
here,

22 would these frame numbers correlate with the actual
frame

23 numbers of the photographs?

24 A. They would not.

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

11194

Alton Wilson - Redirect

1 descriptions that you used in your evidence-recovery
log?

2 A. Yes.

3 Q. Wood panel and then the CT number?

4 A. Yes, they are.

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

6 A. Yes, I do.

7 Q. You have metal frame; right?

8 A. Yes, ma'am.

9 Q. And it's Item No. 7 that you were -- that's
received?
10 A. That's correct.
11 Q. If we then go back to the evidence-recovery log,
which is
12 Defense Exhibit E89, page 3, and we try and correlate
that,
13 that's No. 7 -- right -- we were just looking at?
14 A. That's correct.
15 Q. Metal frame? And we go back here, we look at No.
7, and it
16 says "dry swabbing of metal frame." Correct?
17 A. That is correct.
18 Q. And in the photo, you have the asterisk with a
"no"?
19 A. That's correct.
20 Q. And does that mean that there is a photograph of
this metal
21 frame?
22 A. Yes.
23 Q. And that's what's indicated on your evidence-
recovery log;
24 is that correct?
25 A. That's correct.

11195

Alton Wilson - Redirect

1 Q. So on the item we are interested in, No. 6, we go

back to

2 page 3 of the photo log, E5, and you indicate there is
a

3 photograph of that; correct?

4 A. Yes, I do.

5 Q. You indicate it's Frame No. 4?

6 A. That is correct.

7 Q. Is that the frame of the photograph?

8 A. It is not.

9 Q. You were not responsible for having these
photographs

10 processed, were you?

11 A. I was not.

12 Q. And you didn't number the frames, did you?

13 A. I did not.

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

15 Honor.

16 THE COURT: Mr. Tigar, any recross?

17 RECCROSS-EXAMINATION

18 BY MR. TIGAR:

19 Q. So we have established that it was the parking lot,
not the

20 parking garage. Correct, sir?

21 A. That is correct.

22 Q. And then looking at page 3 here, we see the first
item that

23 you recovered was a wood panel, yellow and red.

Correct?

24 A. That is correct, sir.

25 Q. Now, that item: Was that yellow and red on one
side and

11196

Alton Wilson - Recross

1 wood on the other side?

2 A. To the best of my recollection, it was, sir.

3 Q. Now, you've also told us that the item in front of
you,

4 which is 06, is a wood panel that's yellow and red on
one side

5 and wood on the other. Correct?

6 A. That's correct, sir.

7 Q. But you didn't put "yellow and red" down on 06 on
your

8 evidence-recovery log; correct, sir?

9 A. That's correct, sir.

10 Q. And when you got over to the -- what's -- this is
E5, 03 --

11 you just called these "wood panels" without any
identification

12 as to what color was on them; correct?

13 A. That is correct, sir.

14 Q. So with respect to Item No. 01, there is a
distinction

15 between or a difference between the description on the

log; 16 evidence-recovery log and the description on the photo

17 correct?

18 A. That is correct, sir.

19 Q. And that has to do with the fact that one says
yellow and

20 red and the other does not; correct?

21 A. That is correct, sir.

22 MR. TIGAR: I have no further questions.

23 REDIRECT EXAMINATION

24 BY MS. WILKINSON:

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

11197

Alton Wilson - Redirect

1 Item 01. Is that right?

2 A. That is correct.

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

4 A. That is correct.

5 MS. WILKINSON: Your Honor, may I show the
witness

6 Government's Exhibit 737?

7 THE COURT: Yes.

8 BY MS. WILKINSON:

9 Q. Mr. Wilson, I'm showing you Government's Exhibit
737. Do

10 you see that?
11 A. Yes, I do.
12 Q. And do you see the marking on here with the CT
number?
13 A. Yes, I do.
14 Q. What does it say?
15 A. CT-4/21-01.
16 Q. Can you compare that, Government's Exhibit 737,
which is
17 01, to 06, which is Government's Exhibit 664A? Are
they
18 different?
19 A. Yes, they are different.
20 Q. Are they different shapes?
21 A. Yes, they are.
22 Q. Do they both have yellow and red paint?
23 A. Yes, they do.
24 Q. And do they have different amounts of the red paint
on each
25 item?

11198

Alton Wilson - Redirect

1 A. Yes, they do.
2 Q. Which item -- and use the Government exhibit
number,
3 please -- is bigger?

4 A. Exhibit No. 737.

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

7 MR. TIGAR: Object to that, your Honor.

8 THE COURT: Yes. Rephrase it.

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

11 MR. TIGAR: Nothing further, your Honor.

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

13 MS. WILKINSON: Yes.

14 THE COURT: Agreed, Mr. Tigar?

15 MR. TIGAR: Yes, your Honor.

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

17 THE WITNESS: Thank you, your Honor.

18 THE COURT: Next witness, please.

19 MR. MACKEY: FBI Examiner Ron Kelly.

20 THE COURT: All right.

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

23 (Ronald Kelly affirmed.)

24 THE COURTROOM DEPUTY: Would you have a seat,
please.

25 Would you state your full name for the record
and

1 spell your last name.

2 THE WITNESS: Ronald L. Kelly, K-E-L-L-Y.

3 THE COURTROOM DEPUTY: Thank you.

4 THE COURT: Ms. Wilkinson.

5 MS. WILKINSON: Thank you.

6 DIRECT EXAMINATION

7 BY MS. WILKINSON:

8 Q. Good morning, Mr. Kelly.

9 A. Good morning.

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

12 A. I work with the Federal Bureau of Investigation.

13 Q. Are you assigned to the laboratory?

14 A. Yes, I am.

15 Q. Are you a chemist there?

16 A. Yes, I am.

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

19 A. That's correct.

20 Q. Let's turn to that day. Were you sent to Oklahoma
City to

bombing? 21 assist with the investigation of the Oklahoma City

22 A. Yes, I was.

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

24 A. Yes, I was.

25 Q. Were you part of a specific search team?

11200

Ronald Kelly - Direct

1 A. We were on the chemistry team.

2 Q. Who was on your team with you?

3 A. I was working with Agent Steve Burmeister.

4 Q. And did you have other people assisting you?

5 A. That is correct.

6 Q. Did Mr. Wilson assist you?

7 A. Yes, he did.

8 Q. And were there other individuals that were there
with you

9 at certain times?

10 A. Yes, there were.

11 Q. On April 21, did you search the parking lot across
from the

12 Murrah Building?

13 A. Yes, I did.

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

15 Mr. Kelly?

16 A. I was looking for items that may have some
significance as

17 far as chemical residues.

18 Q. And during your search of the parking lot, did you
have

19 photographs taken of certain items that you were
seizing?

20 A. Yes, there were photographs taken.

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

22 A. Yes, I did.

23 Q. Did you also take swabbings from certain items?

24 A. Yes, I did.

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

11201

Ronald Kelly – Direct

1 A. Not of the swabbings, no.

2 Q. Did you take -- cause photographs to be taken of
the items

3 that were swabbed?

4 A. That is correct.

5 Q. Now, if I could, I want to show you the evidence-
recovery

6 log, which is marked Defense Exhibit E89. Turn to page
03.

7 You did not maintain this log. Is that right?

8 A. No, I did not.

9 Q. Who maintained it?

10 A. Agent Wilson.

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

12 Is this your numbering system?

13 A. Yes, I chose to use that system.

14 Q. What does the "CT" signify?

15 A. Chemistry Team.

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

17 A. The date.

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

19 A. The unique item number.

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

22 A. That's correct.

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

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

11202

Ronald Kelly - Direct

1 panel."

06 down

2 Q. Let's turn to the one that we're all interested in,

3 here. Did you recover that item on April 21, 1995?

4 A. Yes, I did.

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

6 A. Yes, it was marked with that number.

7 Q. Did you, yourself, recover it?

8 A. Yes, I did.

9 Q. Where did you recover it?

side of

10 A. I recovered it from the parking lot on the north

11 the building in the northwest corner.

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

13 A. Yes, I do.

14 Q. What did it look like?

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

sides?

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

color on

17 A. There is red and yellow on one side and a woodish

18 the other side.

and

19 Q. Did you recover other items that day that had red

20 yellow paint on one side?

21 A. Yes, I did.

marked

22 Q. Have you compared those items to the one that we've

23 or that you marked as 06?

24 A. Yes, I have.

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

11203

Ronald Kelly - Direct

1 A. Yes, I do.

2 Q. Did you cause a photograph to be taken of that item
before

3 you seized it?

4 A. Yes, I did.

5 Q. Do you recall who took those photographs?

6 A. No, I don't.

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

8 photographs?

9 A. My recollection was that Mr. -- Agent Wilson
assisted in

10 the photography; that is correct.

11 Q. Did he maintain the photography log?

12 A. Yes.

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

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

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

16 A. Yes, I do.

17 Q. Would you recognize that photograph?

18 A. Yes, I would.

19 Q. I want to show you Government's Exhibit 665. Do
you

20 recognize that?

21 A. Yes, I do.

22 Q. How do you recognize it?

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

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

25 A. Yes, I did.

11204

Ronald Kelly - Direct

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

2 You don't have to point it out yet because
it's not in

3 evidence. Do you recognize it?

4 A. Yes, I do.

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

6 MR. TIGAR: May I examine, your Honor?

7 THE COURT: Yes.

8 VOIR DIRE EXAMINATION

9 BY MR. TIGAR:

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

11 enlargement of a photograph that is contained in a
book. Is

12 that correct?

13 A. That is correct.

14 Q. And the book is one that contains all of the -- a
number of

15 pictures and then a log that has been prepared and
initialed by

16 Agent Wilson. Is that correct?

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

18 Q. I show you what has been marked as Defendant's
Exhibit E5,

19 sir, and ask if you would look at that and confirm
that.

20 Good morning. My name is Michael Tigar. I'm
helping

21 Terry Nichols. I'm sorry. I didn't introduce myself.

22 A. Good morning, sir.

23 Yes, sir, I recognize this book.

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

11205

1 part of the entire book.

2 THE COURT: Well, are you concerned about the
exhibit

3 as -- the photograph as it is enlarged in 665 as not
being the

4 same as the one in the book?

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

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

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

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

16 THE COURT: All right.

17 MS. WILKINSON: We have another agreement.

18 THE COURT: Is that okay with you?

19 MS. WILKINSON: That's fine.

20 THE COURT: E5 and 665 are received.

21 DIRECT EXAMINATION CONTINUED

22 BY MS. WILKINSON:

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

so you 25 All right. Now, why don't I hold it for you

11206

Ronald Kelly - Direct

with 1 can show them what they're seeing. First of all, start

2 this metal fragment here. Tell them what that is.

parking 3 A. This is an item again -- let me start. This is the

next to 4 lot. This is an item in the corner of the parking lot

5 a wood panel which you can see is yellow and red.

as 6 This particular wood panel I recall I labeled

piece, 7 CT-4/21-06; and I took some swabbings from this metal

8 and they were labeled 07 and 08.

morning. 9 Q. Now, this is 06 that we've been talking about all

10 Correct?

11 A. This item is 06. That is correct.

12 Q. And how is it situated in this photograph?

slightly so 13 A. It's situated on the ground, but it's elevated

14 not all the surfaces appear to be touching it.

06 is or 15 Q. Could you use this red pen and circle on 665 where

16 what we've now marked in evidence or marked for

purposes of

17 identification as 664A.

18 MR. TIGAR: He's going to be writing on the
exhibit as

19 received, your Honor?

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

22 MR. TIGAR: No objection, your Honor.

23 THE COURT: All right.

24 THE WITNESS: Specifically this right here.

25 BY MS. WILKINSON:

11207

Ronald Kelly - Direct

1 Q. Have you compared this photograph to Government's
Exhibit 2 664A?

3 A. Yes, I have.

4 Q. Is it the same item?

5 A. Yes, it is the same item.

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

8 MS. WILKINSON: Oh, sure.

9 BY MS. WILKINSON:

10 Q. Now, on April 21, 1995, when you recovered 06, you
told us

right? 11 you recovered other pieces of the wood panel. Is that

correct. 12 A. I recovered several wood panels that day. That's

photograph 13 Q. Okay. And were they photographed and in the

14 book that we've now admitted I think as E9?

15 Excuse me. E5?

were 16 A. Some of those wood panels were photographed. There

17 others that were not photographed.

of you. 18 Q. Okay. Now, you have that photograph log in front

19 Is that right?

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

the 21 Q. And have you compared the log done by Mr. Wilson to

22 photographs?

23 A. Yes, I have.

24 Q. And does the log match the photographs?

25 A. No, it does not.

11208

Ronald Kelly - Direct

the log 1 Q. Do the wood panels, though, that are described in

2 match the photographs?

3 A. Yes, they do.

have 4 Q. Now, let's start with the log. Here at the top we

5 wood panel and the first one -- right -- CT-4/21-01?

6 A. That's correct.

wood 7 Q. Can you see that in the first photograph of the

8 panels?

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

This is the 10 Q. Let's go through the photographs for the jury.

11 first photograph, is it not?

12 A. That's correct.

13 Q. Okay. Is this the second photograph?

14 A. Yes, it is.

whether this 15 Q. All right. And can you see in this photograph

16 is 06 or 01?

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

19 Q. So there is no way this is 06?

20 MR. TIGAR: Objection.

21 THE WITNESS: That item is not 06.

22 THE COURT: Be careful about the leading.

23 MS. WILKINSON: Yes.

24 BY MS. WILKINSON:

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

11209

Ronald Kelly - Direct

1 A. This item here is 01.

2 Q. All right. Let's see if we can focus in, and can
you take

3 that black pen and reach underneath on the screen and
circle

4 where it says CT-4/21-01. Are your initials there?

5 A. Yes, they are.

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

7 A. Yes, I have.

8 Q. Are they different?

9 A. Yes, they are.

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

11 that?

12 A. Yes, I do.

13 Q. Does it have your initials on the back?

14 A. Yes, they are.

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

16 A. Yes, I did.

17 Q. Is that a photograph -- is the photograph on the
screen a

18 photograph of Government's Exhibit 737?

19 A. Yes, it is.

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

21 demonstrative purposes.

22 MR. TIGAR: No objection for demonstrative
purposes.

23 THE COURT: Yes. 737 received for
demonstrative

24 purposes.

25 MS. WILKINSON: Okay.

11210

Ronald Kelly - Direct

1 BY MS. WILKINSON:

2 Q. Now, can you hold this up to the jury and tell the
jury how

3 737 -- which is 01, is it not?

4 A. Yes, it is.

5 Q. -- how 01 is different from 06?

6 A. The bagging itself is the first thing I'd start
with. Just

7 the item number, CT-4/21-01, I assigned a unique item
number to

8 each bag of evidence. That's the differentiation.

9 Second differentiation is the item itself is
different

10 physically. It's slightly larger and it has unique

11 characteristics. Also has two parts in this particular
bag,

12 also.

13 Q. Let's go on through the photographs, if we could,

14 Mr. Kelly. Just push the side of the pen to clear your
15 markings.

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

18 A. No, it does not.

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

21 A. Yes, it does.

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

24 A. Yes, I have.

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

11211

Ronald Kelly - Direct

1 fragment?

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

3 Q. And have you compared 04 to 06?

4 A. Yes, I have.

5 Q. And what are your conclusions?

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

7 Q. All right. Now, this next photograph: Does it
focus on

8 any wood panel?

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

10 Q. If we zoomed in on a certain portion, would we see
a little

11 bit of a wood panel?

12 A. Yes. There are what appears to be several small
wood

13 panels in the photo.

14 Q. Is that one there right in the center?

15 A. Yes, it is.

16 Q. Could you circle that for the jury.

17 And is that item different from 06?

18 A. Yes, it is.

19 Q. How is it different?

20 A. That item is much smaller than 06.

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

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

23 Q. Does it have the same red and yellow -- same amount
of red

24 and yellow paint on it?

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

11212

Ronald Kelly - Direct

1 each.

2 Q. What about the shape?

3 A. The shape is distinctly different, also.

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

5 Now, here's the next photograph in the series.
Does

6 this show a wood panel?

7 A. Yes, it does.

8 Q. And is this anything like 06?

9 A. No, it is not.

10 Q. Do you recall what CT number you gave this item?

11 A. This is CT-4/21-05.

12 Q. And have you reviewed that item and its bag before
coming

13 to court today?

14 A. Yes, I have.

15 Q. And does it have a marking of "CT-4/21-05" on the
bag?

16 A. Yes, it does.

17 Q. And does it compare at all to 06?

18 A. Nothing-- there is no similarity whatsoever.

19 Q. Now, let's go -- the next photo in line. Is this
the one

20 you've already shown us?

21 A. That's correct.

22 Q. And what item is depicted in this photograph?

23 A. Depicted in that item is 06.

24 Q. Next here we have what's -- what's depicted in this

25 photograph?

11213

Ronald Kelly – Direct

1 A. Depicted in that photograph is a metal frame.

2 Q. Is that the same frame we saw in the earlier
photograph?

3 A. Yes, it is.

4 Q. And here: What's depicted in this next photograph?

5 A. A metal piece.

6 Q. Do you see that pink marking around there?

7 A. Yes, I do.

8 Q. Do you know who put that pink marking there?

9 A. No, I do not.

10 Q. Did you receive any instructions as to look for
items that

11 were marked with some kind of pink paint?

12 A. I was informed at one point some items were marked
with

13 pink, and they were items of possible -- some
significant

14 possibilities.

15 Q. Okay. Let's go on with the next one. This doesn't
show

16 any wood panel, I take it?

17 A. No, it does not.

18 Q. And here: Why was this photograph taken?

19 A. I swabbed that particular item.
20 Q. Which item?
21 A. I'm sorry. The yellow item basically in the center
of the
22 photograph.
23 Q. How did you indicate that on the evidence log and
on the
24 photo log?
25 A. When I swabbed an item, an asterisk was placed in
one of

11214

Ronald Kelly - Direct

1 the columns on the evidence log.
2 Q. Do you recall what description you gave this item?
3 A. I believe it was labeled "cash" -- let me refer to
it --
4 "metal cash box."
5 Q. Do you know whether that's a metal cash box?
6 A. Not for certain, no.
7 Q. Why did you describe it that way?
8 A. I believe I asked somebody; but again, I don't
recall
9 exactly why.
10 Q. But you did swab that item?
11 A. I did swab that item.
12 Q. Is that indicated on your recovery lab -- log?

Excuse me.

13 A. Yes, it is.

14 Q. Let's go to the next photograph. What's depicted
here?

15 A. A piece of metal.

16 Q. Did you swab that piece of metal?

17 A. Yes, I did.

18 Q. So if we looked on your log, would that have a "no"
next to

19 the item but an asterisk indicating a photo was taken
of the

20 item?

21 A. That's correct.

22 Q. And here, what are we seeing in this photograph?

23 A. A piece of wood panel and fiberglass wood panel.

24 Q. And do you recall how these wood fragments were
marked?

25 A. It was labeled Item CT-4/21-14.

11215

Ronald Kelly - Direct

1 Q. Have you reviewed these items before coming to
court today?

2 A. Yes, I have.

3 Q. Did you compare them to 06?

4 A. Yes, I did.

5 Q. Are they different?

6 A. They are very different.

7 Q. And finally, we have this item. Do you recognize
that?

8 A. Yes, I do.

9 Q. Do you recall what CT number you assigned to that
number?

10 A. Yes. That was 15.

11 Q. Have you compared 15 to 06?

12 A. Yes, I have.

13 Q. And are there differences between those two items?

14 A. Again, they are very different.

15 Q. What are the differences?

16 A. The amount of color on the panels and again the
unique --

17 the size and the unique shapes.

18 Q. And is CT-4/21-15 shown in this photograph encased
in a

19 bag?

20 A. The item is in a bag, that's correct.

21 Q. Is that bagged marked CT-4/21-15?

22 A. In the photograph?

23 Q. No, the bag that you reviewed before coming to
court today.

24 A. I'm sorry. Yes, the bag itself was marked after I
25 recovered it.

Ronald Kelly – Direct

and some
them; is

1 Q. Now, we've showed the jury all your photographs,
2 of these are in plastic bags when you photographed
3 that right?

4 A. That's correct.

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

6 A. No, it was not.

photographed

7 Q. Did you remove it from its location before you
8 it?

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

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

placed in a
number

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

item to?

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

15 A. I then gave the item to Agent Wilson.

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

There
They were

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

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

22 in place?

23 A. Yes, it was.

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

25 Honor.

11217

Ronald Kelly - Direct

1 THE COURT: Mr. Tigar.

2 MR. TIGAR: May I recover the photograph book
that he

3 has, your Honor?

4 THE COURT: Sure.

5 MR. TIGAR: Thank you.

6 Thank you, sir.

7 CROSS-EXAMINATION

8 BY MR. TIGAR:

9 Q. Mr. Kelly, a moment ago you said that -- my note
says

10 "before I photographed it." You didn't do any of these
11 photographs; correct, sir?

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

13 Q. Did you have a camera?

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

15 Q. My question is did you have a camera?

16 A. I don't recall having my own camera, no, sir.
17 Q. And you do recall testifying on a prior occasion
that the
18 photographer with you the entire time was Special Agent
Wilson;
19 correct?
20 A. That's correct.
21 Q. And is it your testimony now that you were in error
on that
22 prior occasion?
23 A. I may have been mistaken as far as my recollection
of who
24 took the photographs. That's correct.
25 Q. And with whom did you discuss the possibility that
you

11218

Ronald Kelly – Cross

1 might have been mistaken about who took the
photographs?
2 A. I have spoke with Agent Wilson about this.
3 Q. So you and Agent Wilson have, what, compared notes
on what
4 happened that day so that you could try to figure out
who took
5 the pictures? Is that correct?
6 A. No, sir. We did discuss the issue, though.
7 Q. And -- well, what discussion did you have?

the 8 A. Again, a general discussion of the crime scene and
9 events that occurred.

that he 10 Q. Now, was this after you had previously testified
11 was the one that took the pictures that you had this
12 discussion?

13 A. Yes, it was.

14 Q. Did anybody ask you to have the discussion?

15 A. No.

16 Q. You did it on your own?

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

19 Q. Do you know where you were?

20 A. I was here in Denver.

21 Q. Were you in the courthouse?

22 A. No, sir.

23 Q. Were you at the command post?

24 A. Yes, sir.

Agent 25 Q. And did you know at that time that both you and

11219

Ronald Kelly - Cross

1 Wilson were going to be witnesses here?

2 A. Yes, I did.

3 Q. And did you understand that both you and Agent
Wilson might
4 be asked about who took the photographs?
5 A. Yes, sir.
6 Q. Had you received any instructions from anyone as to
whether
7 or not two witnesses who were going to appear in the
same
8 proceeding to discuss the same subject, both Government
9 employees, should or should not be discussing their
testimony
10 with one another?
11 A. I'm sorry. We weren't discussing our testimony.
We were
12 reviewing materials that we both acquired at the crime
scene or
13 both utilized at the crime scene.
14 Q. Did you -- had you had any instructions before this
15 conversation as to whether you and someone else who was
going
16 to be a witness should have a discussion concerning the
subject
17 matter of the testimony that both of you would be
expected to
18 offer?
19 A. I was not given instructions that I was aware of,
no.
20 Q. And how long have you been an employee of the
Federal
21 Bureau of Investigation, sir?

22 A. 19 years.

offered 23 Q. And during that time, how many times have you

24 testimony in court?

25 A. Approximately 10 times.

11220

Ronald Kelly – Cross

not 1 Q. And are you aware of any rule concerning whether or

the 2 people, two people, who are going to offer testimony on

that 3 same subject should be discussing the subject matter of

4 testimony before they come to court?

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

with 6 Q. Yes, sir. Are you aware of any rule that deals

testimony 7 whether or not two people who are going to be giving

before 8 on the same subject should be discussing that testimony

9 they come to court?

10 A. No, I'm not.

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

rule, 12 A. I'm -- my response was I'm not familiar with that

13 sir.

14 Q. Okay. Can you recall when you had this discussion

with

15 Agent Wilson?

16 A. I don't recall the exact date.

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

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

19 Q. And was that the only conversation that you had
with Agent

20 Wilson on this subject?

21 A. The conversation I had with Mr. Wilson concerned --
I'm

22 sorry. Would you please repeat your question one more
time.

23 Q. Yes, sir. Was the conversation you're telling us
about the

24 only conversation that you have had with Agent Wilson
about the

25 evidence-recovery process of the 21st of April, 1995?

11221

Ronald Kelly - Cross

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

2 Q. Yes, sir.

3 A. -- of the recovery, I spoke with him then. I have
spoke

4 with Mr. Wilson on several occasions in the past
several

5 months, too; but as far as discussing our testimony,
our

6 conversations did not address our testimonies. Our

had in 7 conversations addressed our review of evidence that we

8 front of us.

this item 9 Q. And did that evidence include matters concerning

10 06?

recall 11 A. 06 may have come up in the conversation. I don't

12 specifically, though.

taken, 13 Q. And did the evidence include photographs that were

you had 14 evidence that you were reviewing -- photographs that

15 taken?

photographs. 16 A. The evidence we were reviewing included

talk about 17 Q. During those discussions, how many times did you

18 the issue of who took the photographs?

come up. 19 A. I don't recall how many times, but the matter did

you can 20 Q. And when was the most recent such conversation that

Agent 21 recall in which you were reviewing the evidence with

22 Wilson together?

23 A. It would be at least several days ago.

having 24 Q. And where were you when you and Agent Wilson were

25 this discussion several days ago?

11222

Ronald Kelly – Cross

and it 1 A. This would have been at the beginning of the week,
2 would have been in the command post.

Wilson 3 Q. Was anyone else present other than you and Agent
4 when you were having these discussions a few days ago?

5 A. Not that I recall, no.

Wilson 6 Q. During any of the discussions you had with Agent
and 7 after the 21st, was anyone else present other than you

8 Agent Wilson?

have 9 A. Previous discussions from several months ago may
10 involved some other individuals; that's correct.

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

the 13 A. Again, I reviewed and prepared for this trial at
-- I'm 14 command post here in Denver, and that occurred in the

15 sorry. That occurred at the command post. Excuse me.

16 Q. Well, who was present, sir?

my 17 A. Oh, I'm sorry. I don't recall who was present with
18 discussions with Agent Wilson about that. It was,

again, a

19 casual conversation with Agent Wilson as we reviewed
some of

20 the material we had.

21 Q. Do you remember if any Government lawyers were
present

22 during any of these conversations?

23 A. Not the conversations I had with Mr. Wilson, no.
Those

24 conversations were in -- just between Agent Wilson and
I on

25 those times with no other Government witnesses
participating

11223

Ronald Kelly - Cross

1 that I recall.

2 Q. Well, what was the purpose of having these
conversations

3 with Agent Wilson?

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

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

7 A. No, sir.

8 Q. Now, sir, you testified that you came to the lot on
the

9 21st. Is that right?

10 A. That's correct.

gloves? 11 Q. And during this recovery process, were you wearing

12 A. Yes, I was.

13 Q. What kind of gloves were you wearing?

14 A. Disposable latex-type gloves.

provided 15 Q. And are those provided by the FBI, or are they

16 by -- were they provided by other people on the scene?

that I 17 A. They were provided by the FBI, and those are gloves

18 brought with me.

or -- 19 Q. And are -- do they have a powder substance in them,

powderless? 20 to help you get them on and off easier, or are they

21 A. The ones I use are powderless.

had 22 Q. Were you aware that other people at the crime scene

23 gloves that had powder in them?

24 A. I was not aware of that.

powder in 25 Q. Do you know that there are latex gloves that have

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Ronald Kelly - Cross

1 them?

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

3 Q. Are you familiar, based on your 19 years of

experience,

4 what substance is used to powder the inside of latex
gloves?

5 A. Talc, I believe.

6 Q. Are you aware that calcium carbonate is also used
to powder

7 the inside of disposable latex gloves?

8 A. I'm not aware of that.

9 Q. Now, when you arrived at the parking lot, you saw
some pink

10 paint on the ground. Is that fair?

11 A. Yes.

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

13 that right?

14 A. Yes.

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

16 A. I was told the pink paint was marking some items,
some

17 significant items that may be recovered at a later
time.

18 Q. Who told you that?

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

20 Q. Where did you hear it?

21 A. At the crime scene itself.

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

23 A. I don't recall -- I don't recall where again. It
was just

24 in the -- at the crime scene.

of the 25 Q. Now, you arrived in Oklahoma City, sir, the morning

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Ronald Kelly - Cross

1 20th of April. Correct, sir?

2 A. That's correct.

3 Q. You spent the night of the 19th in Little Rock,
Arkansas.

4 Is that right?

5 A. Yes, I did.

6 Q. And why did you -- what was it that happened that
caused

7 you to stop in Little Rock, Arkansas, overnight?

8 A. Bad weather.

9 Q. Weather that prevented your aircraft from landing
at Will

10 Rogers Airport, Oklahoma City; correct?

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

12 Q. Yes. And Will Rogers Airport just happens to be
the name

13 of the airport. You knew that?

14 A. Thank you.

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

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

17 A. In the a.m. I don't recall exactly what time.
18 Q. And was it clear from what you could see on your
way
19 downtown that it indeed had been raining the night
before?
20 A. I'm not sure I follow your question.
21 Q. Well, was it wet, the ground? That's what I mean.
22 A. I don't recall if it was still wet or not.
23 Q. But in any event, whatever the weather was, your
plane
24 wasn't able to get into Oklahoma City. Correct?
25 A. That is correct.

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Ronald Kelly - Cross

1 Q. Now, did you then start attending some briefings
about what
2 you were to look for and how you were to do it?
3 A. There was a morning briefing; that's correct.
4 Q. That was done by Special Agents Williams and Hahn;
is that
5 right?
6 A. I don't recall who gave the briefings any
particular
7 morning.
8 Q. Well, the morning of the 21st. You don't remember
who gave
9 the briefing?

10 A. No, I don't.

11 Q. Were you briefed on the 20th or the 21st by Special
Agents

12 Williams and/or Hahn?

13 A. Not that I recall by date, no.

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

15 A. Yes, he was.

16 Q. And Mr. Burmeister is a chemist from the -- he's a
special

17 agent. Right?

18 A. Yes, he is.

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

20 A. Yes, he is.

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

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

23 Mr. Burmeister there.

24 Q. And who was your supervisor, sir?

25 A. Roger Martz.

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Ronald Kelly - Cross

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

3 A. That's correct.

4 Q. Both dry and wet. You've testified about that on
direct

5 examination; right?

6 A. Yes.

7 Q. And the purpose of those was to identify potential
residues

8 and to identify background levels. Is that right?

9 A. It would be more accurate to say to collect
residues and

10 collect background, yes.

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

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

13 Right?

14 A. Chemical residues.

15 Q. And when you got to that parking lot, did you see
that a

16 number of automobiles had caught fire and burned?

17 A. Yes. That was quite evident.

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

19 A. Swabbing for background levels would be taking
samples away

20 from your area of interest to see what levels of
chemicals

21 would be present.

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

23 technique where you collected evidence and put it into
a

24 plastic bag. Do you remember that?

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

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Ronald Kelly - Cross

1 Q. Yes. You collected evidence and put it into a
plastic --

2 into plastic bags. Is that right? Ziploc bags?

3 A. On the day of the 21st?

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

5 A. Yes, I did.

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

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

8 decision.

9 Q. Yes, sir. Are you aware of any chemical -- those
are

10 polyethylene bags?

11 A. Ziploc polyethylene bags.

12 Q. Now, Ziploc is permeable to certain items that are
found in

13 commercial explosives -- correct -- or do you know that
one way

14 or another?

15 A. Yes, I do.

16 Q. And what is the answer?

17 A. Yes, there are some.

18 Q. And how did you learn that?

19 A. Through my --
20 Q. Pardon?
21 A. Through my experience at the laboratory.
22 Q. Now, you kept a diary, did you not, of your work
while you
23 were in Oklahoma City. Is that correct?
24 A. I kept personal notes in my day planner; that's
correct.
25 Q. And you also took some -- you also made some notes,
did you

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Ronald Kelly - Cross

1 not, concerning the photographs that were taken?
2 A. I'd have to see what notes you are referring to
there, sir.
3 Q. All right, sir. I'm going to show you what's been
marked
4 as Defendant's E53.
5 MR. TIGAR: May I stand next to the witness,
your
6 Honor?
7 THE COURT: Yes.
8 BY MR. TIGAR:
9 Q. Page 1, and I'm referring to these Bates' stamped
pages.
10 That's from your Daytimer. Correct?
11 A. That's correct.

12 Q. Page 2 is from your Daytimer; correct?

13 A. Yes.

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

15 A. Yes, it is.

16 Q. Page 3 is from your Daytimer?

17 A. Yes.

18 Q. The writing is yours?

19 A. Yes, it is.

20 Q. Page 4 from your Daytimer, the writing is yours?

21 A. Yes, it is.

22 Q. Page 5 from your Daytimer, the writing is yours;
correct?

23 A. Yes, it is.

24 Q. Pages 6, 7 and 8: Do you -- do you know what those
are?

25 A. Yes, I do.

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Ronald Kelly - Cross

1 Q. They're typewritten versions of what's on your
Daytimer.

2 Correct?

3 A. That is correct.

4 Q. Now, page -- the next, 9, 10, 11, 12, 13, 14, and
15 are

5 copies of the evidence-recovery log; correct?

6 I'm just down to 15, sir.

7 A. Okay.

8 Q. Is that right? That's what that is?

9 A. Those are, yes.

10 Q. Okay. And what -- and page 16, the circled
numbers: Is

11 that your writing?

12 A. Yes, it is.

13 Q. And do you know who made the marks down here: F
number, so

14 forth and so on?

15 A. I did that, also.

16 Q. Okay. So that's yours.

17 MR. TIGAR: We offer E53, your Honor.

18 MS. WILKINSON: We have no objection.

19 THE COURT: E53.

20 MS. WILKINSON: Your Honor, I'm sorry. We do,
because

21 it contains notes -- portions of it contains notes
about other

22 testimony he's not testified to, other days of what he
did in

23 Kansas and things like that; so I would object to those
pages.

24 MR. TIGAR: All right. Your Honor, we'd be
happy to

25 redact whatever the Government wants, provided we could
have in

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Ronald Kelly - Cross

1 the pages 1, 2 --

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

4 MR. TIGAR: And 16.

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

7 THE COURT: All right.

then --
8 MR. TIGAR: Then, your Honor, we would redact,
9 I see what Government Counsel is talking about -- the
entries

10 that begin with -- on page 2 with the words "flew to."

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

redact
13 MR. TIGAR: From the 22d on, we'd agree to
of page
14 those and redact out all of page 3, all of page 4, all
15 5, all of page 6, because the writing is legible. We
don't

16 need the typewritten version, and then --

17 MS. WILKINSON: All of page 7 and 8.

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

19 MS. WILKINSON: And the rest is fine.

20 MR. TIGAR: And then the rest is fine, your
Honor. So
21 with those changes, which I can make immediately, your
Honor,
22 with -- if Counsel and I can have a moment with a pair
of
23 scissors, then the exhibit as it comes in would be
exactly what
24 we've agreed to.
25 MS. WILKINSON: We don't need to do the
cutting right

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Ronald Kelly - Cross

1 now.
2 MR. TIGAR: I'm not going to show any of it to
the
3 jury, your Honor. That has not been agreed to.
4 MS. WILKINSON: Okay.
5 THE COURT: Then E53 is received with
agreement on
6 redaction.
7 MR. TIGAR: Thank you, your Honor.
8 BY MR. TIGAR:
9 Q. Now, sir, I'm going to show you page 16 of what's
been
10 received now as E53.
11 Now, this is a copy of the evidence-recovery
log or a

12 page from it; correct, sir?

evidence 13 A. That is a document I prepared their a copy of the

14 log.

No. 5 -- 15 Q. Right. And you went through, then, and got Frame

-- 16 well, let's just look. Here's the top. Here's Item 01

17 correct?

18 A. Yes, it is.

19 Q. -- that we've been talking about. Wood panel,

yellow and 20 red; correct?

21 A. Yes.

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

23 A. Actually, that's corrected. That should be F1.

The 1 is 24 not very clearly stroked through the 5, but that should

be F1. 25 Q. Oh, that's F1?

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Ronald Kelly - Cross

1 A. Yes.

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

3 A. I believe I wrote the 5 first, realized I was in

error,

4 then wrote the 1 on top.

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

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

7 in the book.

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

9 there? F something?

10 A. 2.

11 Q. F No. 2?

12 A. Yes.

13 Q. And you wrote that?

14 A. Yes, I did.

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

16 2?

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

18 item.

19 Q. So F2, we're supposed to understand, refers to what
Agent

20 Wilson had prepared showing you now, E5, F2. Correct?
I can

21 zoom in and see Frame No. 2, wood panel, and that's No.
04.

22 Correct?

23 A. That is correct.

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

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

2 from

11234

Ronald Kelly – Cross

1 this photo list.

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

3 correct?

4 A. That is correct.

5 Q. All right. Then after you wrote F2, you went
across and

6 you wrote a 7 with a circle. Correct?

7 A. Yes, I did.

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

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

11 Q. So that these numbers 5, 2, 3, 4, 5, 6 -- well,
this -- up

12 here, the top, you wrote a 1 first and then -- or a 5
first?

13 I'm sorry.

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

15 Q. So 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 refers to the
numbers on

16 Agent Wilson's log; right?

17 A. On the photo log.

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

correct?

19 A. Yes.

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

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

25 That is correct.

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Ronald Kelly – Cross

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

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

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

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

10 Q. Your recollection is that he was the photographer?

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

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

15 A. Yes, I did.

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

18 A. That's correct.

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

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

24 Q. All right. Now, I want to start with these
pictures. And

25 this is, I represent to you -- it's got a 4 on it.
That's a

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Ronald Kelly - Cross

1 Bates' number, but it's also the frame number that's on
the

2 back. Right?

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

4 Q. Okay. Do you see it there?

5 A. Yes, I do.

6 Q. I'm going to turn it back over. So this is 4.
Correct?

7 What are we looking at here?

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

9 Q. Okay. Did you recover that object?

10 A. No.

11 Q. Okay. So this object does not appear on any
evidence log;

12 is that right?

13 A. No, it does not.

14 Q. Okay. And do you know why a picture was taken of
it and

15 preserved in a book if it didn't appear on an evidence
log?

16 A. No, I did not.

17 Q. Do you remember directing the picture be taken?

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

19 Q. Going to turn the page. Here is something that's
marked on

20 the front 005. Watch. I'm going to turn over. This
is Frame

21 No. 5. See that?

22 A. Yes, I do.

01. 23 Q. Now, this, you testified, is a picture of the item
24 Correct?
25 A. That is correct.

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Ronald Kelly - Cross

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

talking 4 Q. Now, here are some of this pink spray we've been
5 about before; correct?

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

7 Q. Sure.

8 A. There we go.

9 Q. Does that appear to be the pink spray?

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

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

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

be 13 Q. All right. It doesn't -- well, does it appear to
14 sprayed on, or brushed on, or can you tell?

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

tell 16 Q. That day when you were in the photograph, could you

be 17 whether the paint you saw, the pink paint, appeared to

18 sprayed on, or brushed on?

19 A. I can't recall.

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

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

22 A. Yes.

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

24 A. Yes, sir.

bag and 25 Q. Now, why did you choose to put this one into the

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Ronald Kelly - Cross

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

3 A. I don't really recall, sir.

4 Q. Was that the correct method of recovery?

5 A. That was not the correct method.

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

7 sir? 17?

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

9 Q. At that time.

10 A. Your math sounds about right. About 17.

the
11 Q. And was Mr. Burmeister present with you that day in
12 parking lot?
was not.
13 A. Not during the collection of these items. No, he
there.
14 Q. Now, I'm going to turn. And this is labeled 006
15 Turn it over on the back. See the number 6?
16 A. You have your -- I'm sorry. There you go. Yes.
17 Q. 6. Okay.
18 Now, what's this?
19 A. You have your zoom on right now.
See what
20 Q. I'm sorry. Let me pull my zoom -- the zoom out.
21 this is.
22 A. I'm sorry. Could you repeat your question.
23 Q. Yes. This is Frame 6. Correct?
24 A. Yes, it is.
25 Q. And what is it?

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Ronald Kelly - Cross

appears
1 A. There are bricks present, metal frames, wood block,
2 to be a small piece of plastic, some other
miscellaneous items.
this
3 Q. And did you collect any pieces of wood panel from

4 area? Did you see any pieces of wood panel there?

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

6 Q. Now I'm going to show you what's been received as
page 16

7 of E53. Is that your circled No. 6 there?

8 A. Yes, it is.

9 Q. Does it correspond to this item "pieces of wood
panel"? Is

10 it in the same line as "pieces of wood panel"?

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

12 Q. Well, do you see any pieces of wood panel in the
frame

13 that's numbered 6?

14 A. No, there are not.

15 Q. Can you tell the jury, please, how the number 6 in
your

16 writing came to be on this log if the frame numbered 6
doesn't

17 have any pieces of wood panel on it?

18 A. Omitted on the line entry was the item of plastic,
which is

19 also contained in 02 and that is pictured in the photo.

20 Q. Are you telling the jury that this evidence log,
when it

21 says "pieces of wood panel" actually should "read piece
of wood

22 panel and piece of plastic"?

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

24 accurate description.

panel 25 Q. Well, you agree with me there are no pieces of wood

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Ronald Kelly - Cross

1 visible in this photograph; correct?

2 A. Not in the photograph, sir.

Is this a 3 Q. All right. And the pieces of plastic are where?

4 piece of plastic? Where is --

Would 5 A. I'm sorry. I don't see you pointing at anything.

6 you like me for me to circle it?

is. 7 Q. With the light pen, just show me where the plastic

8 That's that piece right there; correct?

9 A. That is correct.

-- I'm 10 Q. Now let's take a look at the next one. And this is

That's 11 going to show you the back of it, sir. You can verify.

12 No. 7. Correct?

13 A. That's correct.

that 14 Q. Okay. And we're looking here, and we should find

15 there is a picture of a wood panel there. Correct?

16 A. Yes, there is.

wood 17 Q. On your log. Okay. Now, this is another piece of
18 panel that's in a bag; right?
19 A. Yes, it is.
writing on 20 Q. Now, this piece of wood panel doesn't have any
21 it. The bag doesn't have any writing on it. Correct?
22 A. Not as pictured on the photograph. I see no
writing on it.
one, you 23 Q. All right. And is it your memory that for this
24 picked it up, put it in a bag, set it back down on the
ground
25 but didn't put any writing on it? Is that what
happened? Is

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Ronald Kelly – Cross

1 that what happened?
2 A. I can only tell you what's evident in the
photograph.
3 There is no writing on the bag.
4 Q. Do you have any independent memory of what you did
that
5 day?
6 A. I don't have an independent recollection of that
action.
7 Q. Is this the proper way to document the recovery of
evidence
8 at a crime scene?

9 A. Again, no, it is not.
10 Q. And in terms of a scale, is it -- is it more
improper to
11 have a picture of it without any writing on the bag, or
not, or
12 the same?

13 MS. WILKINSON: Objection, your Honor.

14 THE COURT: Sustained.

15 BY MR. TIGAR:

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

18 A. Yes, I do.

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

20 A. Yes, it is.

21 Q. And this one is not bagged; correct?

22 A. No, it is not in the photograph.

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

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

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Ronald Kelly - Cross

1 before it's recovered.

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

3 A. I'm sorry. There is --

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

5 some more.

6 Why did you decide to change from bagging to
not

7 bagging?

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

9 mistakes.

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

11 correct?

12 A. That would be a logical assumption, yes.

13 Q. Okay. Well, let me show you photograph No. 17.
Let's

14 verify. There we are, and here on the back is 17.
Correct?

15 A. Yes, it is.

16 Q. Now, here, does 17 indicate that this is the very
last

17 picture that was taken; that is to say, that this
picture was

18 taken after the picture of 06?

19 A. Yes, it is.

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

21 A. That's correct.

22 Q. So did you decide to recover some and put them in a
bag and

23 then changed your mind that that wasn't the right
procedure,
24 and then took the pictures of them without the bag for
a while
25 and then put them back in the bag?

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Ronald Kelly – Cross

1 MS. WILKINSON: Objection to compound
question, your

2 Honor.

3 THE COURT: Overruled.

4 THE WITNESS: If I could address, there were
several

5 questions --

6 BY MR. TIGAR:

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

8 way in which you were photographing these items?

9 A. There may have been reasons why items were not
photographed

10 in place. One reason would be if I had --

11 Q. Excuse me, sir. Not what may have been. Okay? I
want you

12 to give us your memory as you sit there today.

13 A. I have no --

14 Q. What do you remember about why you changed?

15 A. I have no independent recollection of why I would
have

16 changed or why a particular item was photographed
before or in
17 a bag.
18 Q. Now, have you had discussions with anyone about why
the
19 changes took place?
20 A. No.
21 Q. Now, sir, I'd like to show you what's been marked
here as
22 defendant's -- excuse me -- as page 15. And I'll turn
it over.
23 You can verify that that's Frame 15. Correct?
24 A. Yes, it is.
25 Q. Is that right? Okay. Now, here we see an item
that was a

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Ronald Kelly - Cross

1 metal frame. You took a swabbing somewhere in here.
Correct,
2 sir?
3 A. I took a swabbing on the metal piece. Yes, sir.
4 Q. And was it the metal piece that had the paint on
it, or
5 another metal piece?
6 A. If I may circle the piece, I can indicate to you.
7 Q. Yes, please do.
8 Now, we see on here this paint. This paint on

the

9 ground. Correct?

10 A. Appears to be paint.

11 Q. Can you tell from this picture whether that was
painted on,

12 or sprayed on?

13 A. No, I do not know.

14 Q. And do you have a memory from that day as to
whether it

15 appeared to be painted on, or sprayed on?

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

17 Q. All right. Now, this -- you see this Pennzoil can
up here.

18 Right? See the Pennzoil bottle?

19 A. Yes, sir.

20 Q. And that was in that position at the time that you
took

21 your swabbing; correct?

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

23 Q. Now, sir, this is the Frame 10. Do you remember
that, or

24 do you want me to show you the back?

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

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Ronald Kelly - Cross

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

2 10?

3 A. Yes, I do.

4 Q. Okay. Now, that, you've told us, is what you
identified as

5 a picture of 06, the wood panel. Correct?

6 A. Yes, sir.

7 Q. And the wood panel is off over here to the side
where my

8 finger is pointing. Right?

9 A. Yes, it is.

10 Q. Now, would it be fair to say, sir, that for every
other

11 wood panel of which you have a picture, the item that
you're

12 photographing is in roughly the center of the picture?

13 A. Not necessarily.

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

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

16 review each one.

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

18 This we established, No. 4, we don't know what
this

19 is. Right?

20 A. No, we don't.

21 Q. Here's No. 1; correct?

22 A. Yes.

23 Q. In the center?

that 24 A. Yes, that's the way -- I had that -- I effected

25 picture to be taken with the item in the middle.

11246

Ronald Kelly - Cross

has no 1 Q. Here is a picture that is labeled "wood panel" but

2 wood panel on it; correct?

3 A. That is correct.

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

5 A. Yes, it does.

the 6 Q. Here is 07. There is the wood panel and it's in

7 center. Correct?

8 A. That one, it is.

9 Q. Do we know what this is?

wood 10 A. That's a general shot which encompasses several

11 panels, and they are throughout the photo.

recover any of 12 Q. Right. And in this general shot, you didn't

13 those wood panels, did you?

that I 14 A. Actually, there is one wood panel pictured in there

15 did recover.

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

that?

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

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

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

20 MR. TIGAR: May I approach, your Honor?

21 THE COURT: Yes.

22 THE WITNESS: I'd request to check the item
itself,

23 but I believe you'll find that item in CT421-10.

24 BY MR. TIGAR:

25 Q. CT421-10. All right?

11247

Ronald Kelly - Cross

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

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

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

4 Government exhibit for demonstrative purposes.

5 MR. TIGAR: For demonstrative purposes, yes.

6 BY MR. TIGAR:

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

8 MS. WILKINSON: It's Government's Exhibit 2118
for

9 demonstrative purposes.

10 BY MR. TIGAR:

11 Q. You're testifying, sir, that that which is
CT-4/21-10 is

12 what we're seeing in Frame No. 8; is that right?

13 A. There is an item in your photograph that can be
found in

14 10. That is correct.

15 Q. All right. Now -- now I'm going to show you your
log

16 again; and there is no Frame 8 on here, is there, sir?

17 A. No, there is not.

18 Q. So whatever it is that's depicted here in Frame No.
8, your

19 accounting of Frame No. 8 didn't make its way onto your

20 identification system that you prepared; is that
correct?

21 A. That's correct.

22 Q. All right. Here's Frame No. 9, sir. Wood panel,
piece in

23 the center. Correct?

24 A. That is right.

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

11248

Ronald Kelly - Cross

1 A. Yes, it is.

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

3 06 -- right?

4 A. That's correct.

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

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

7 Q. And the center -- the item that appears to be
centered is

8 this metal piece; correct?

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

10 Q. Now, 11: Is that a picture of that same metal
piece we

11 were just looking at?

12 A. Yes. In that one, that's centered in the
photograph.

13 You're correct.

14 Q. Here's 12. That's the piece of evidence -- correct
-- I'm

15 pointing to?

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

17 Q. And that's centered. Right?

18 A. Yes, it is.

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

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

21 Q. Well, whether or not it -- that's why it was taken.
You

22 labeled it as "gen. shot." Correct?

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

24 photograph.

25 Q. So that's correct, general shot.

11249

Ronald Kelly - Cross

took 1 Then 14 is what you call the cash box, and you

2 swabs from it; right?

3 A. That is correct.

4 Q. And that's centered; correct?

5 A. Yes, it is.

in. 6 Q. And in 15, it's this metal piece we're interested

7 Correct?

8 A. That's correct.

9 Q. And that's centered; correct?

10 A. Yes, it is.

or 11 Q. And 16: It this metal piece or this metal piece --

about for 12 excuse me -- wood piece. Which one are we thinking

13 frame 16?

14 A. I believe both those pieces are recovered.

looking at 15 Q. All right. And the shot -- this piece here I'm

16 is in the center; right?

17 A. Yes, it is.

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

19 A. Above it, yes.

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

21 A. Yes, it is.

22 Q. Now, looking back at No. 10, do you see the pink
color over

23 on these bricks, sir? Do you see a pink color?

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

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

11250

Ronald Kelly - Cross

1 one?

2 MR. TIGAR: Oh, good. Thank you.

3 BY MR. TIGAR:

4 Q. We can hold this up for the jury.

5 Is that pink coloration there? Can you see
that on

6 the picture?

7 A. Appears to be pink color there, yes.

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

9 there?

10 A. Yes, I can see the pink color.

11 Q. You can see it. And did that resemble the pink --
thank

12 you -- does that resemble the pink that you had been
told would

13 mark items of evidence as you saw it that day?
14 A. I don't recall that they referred to a pink color;
just
15 that items would be marked.
16 Q. Be marked. Okay. So you weren't told about a pink
color;
17 correct?
18 A. Not necessarily about color. I don't recall that.
19 Q. As you walked to the crime scene on the 20th, had
you
20 observed a lot of pink circles?
21 A. Yes. That was quite evident.
22 Q. That was. For example --
23 THE COURT: Excuse me just for the record.
665 was
24 what was just now displayed?
25 MS. WILKINSON: Yes, your Honor.

11251

Ronald Kelly - Cross

1 THE COURT: Okay.
2 MR. TIGAR: Yes. Thank you, your Honor.
3 I'm sorry, your Honor. My records show that
4 Government's Exhibit 736 is in.
5 THE COURT: Well, we'll check.
6 THE COURTROOM DEPUTY: No.

7 MR. TIGAR: Not in?
8 THE COURTROOM DEPUTY: No, it is not.
9 THE COURT: I don't show it from the official
record.
10 MR. TIGAR: I've already showed it to one
witness by
11 error, your Honor. I apologize. May I show it to the
witness?
12 MS. WILKINSON: May I just ask Mr. Ryan? I
believe
13 this is the item recovered from Mr. Sprague.
14 We have no objection. If it's not marked --
15 MR. TIGAR: My recollection is it came in
through
16 Mr. Sprague. 736.
17 THE COURT: It's in now.
18 MR. TIGAR: Thank you, your Honor.
19 BY MR. TIGAR:
20 Q. Is this sort of pink line here the sort of thing
you
21 remember seeing?
22 A. Yes, I do.
23 Q. There were a lot of those at the crime scene;
right?
24 A. There were a number of them.
25 Q. And -- and you recognize that person; correct?

Ronald Kelly – Cross

1 A. That's blurry on my monitor.

2 Q. Okay. Well, doesn't matter.

3 Now, then, let's look at 06. Now, your
testimony,

4 sir, is that when you recovered it, it was lying like
this and

5 one edge of it was resting on that piece of metal;
correct?

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

7 was resting.

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

9 A. I don't have an independent recollection of that;
just what

10 I can observe from the photograph there.

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

12 A. Not an independent recollection; correct.

13 Q. All right. And this scene here that we're seeing
around

14 here: What is -- what is that on the ground? That's
not the

15 natural condition of the parking lot, is it?

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

17 Q. Now, the portion of the parking lot that you were
searching

18 that day where this was recovered is adjacent to a
restaurant

19 called the Athenian; correct?

20 A. I'm not aware of that.

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

22 A. I do recall that.

23 Q. And as you looked up, could you see that bricks had
tumbled

24 down from a wall of the building and that a portion of
the roof

25 had caved in? Do you remember that?

11253

Ronald Kelly - Cross

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

2 that location.

3 Q. And is -- from your recollection, what is this
stuff on the

4 ground here? Is it dirt? Is it rubble? Is it cement?
Is

5 it -- what is it?

6 A. I don't know.

7 Q. Did you care?

8 A. Again, the purpose of the photograph would help me
9 recognize some things there; but again, at the time,
that did

10 not cross my mind, no, sir.

11 Q. Well, you -- did you intend at the time you
collected this

12 item that it was going to be tested for any chemical
residues

13 that might be present on it?

14 A. Yes.

15 Q. Did you take any samples from the ground upon which
a
resting on 16 portion of it was resting -- or was a portion of it
17 the ground?

18 A. It appears so, yes.

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

21 A. Yes, I do.

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

11254

Ronald Kelly - Cross

1 A. No.

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

5 about background levels of chemicals?

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

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

11 A. Yes.

12 Q. Nobody else told you; right?

from
13 A. Other than the general instructions I had received

14 Mr. Burmeister earlier.

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

16 A. That is correct.

you about
17 Q. What general instructions did Mr. Burmeister give

that
18 recovering items and preserving any traces of chemicals

came?
19 might be present in the environment from which they

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

21 Q. You're talking about the 21st?

22 A. Yes, sir.

you had
23 Q. Had you ever worked a crime scene before in which

other medium
24 had to recover items that had been resting on some

residues 25 or substance that might be a place where chemical

11255

Ronald Kelly – Cross

1 would be present?

2 A. Could you repeat the question one more time.

where you 3 Q. Yes. Have you ever worked a crime scene before

4 were collecting things that were going to be tested for
5 chemical residue?

6 A. Not that I recall offhand.

training at all 7 Q. So as of the 21st of April, had you had any

evidence 8 or instructions at all about how to recover items of

the 9 to determine what chemical residues might be present in

10 environment from which they came?

training, 11 A. I detect a couple questions there. I did receive

12 yes.

collect 13 Q. All right. And did you receive training in how to

be 14 items from an environment or a place where there might

in that 15 chemical residues that would get onto things that were

16 place?

I've
not sure
evidence
sir?

17 A. I'm not quite sure if I understand your question.
18 received training in the collection of evidence. I'm
19 that answers your question, though.
20 Q. Did the training you received in the collection of
21 include training about establishing background levels?
22 A. I don't recall that being in the training, no.
23 Q. You know what background levels are, don't you,
24 A. Yes, I do.
25 Q. So you didn't have any training in that?

11256

Ronald Kelly – Cross

now.
recess.
have a few
during

1 A. I don't recall my training involving that right
2 MR. TIGAR: May I have a moment, your Honor?
3 THE COURT: Yes.
4 Perhaps this would be a good time to take a
5 Would it?
6 MR. TIGAR: Thank you, your Honor. I just
7 more minutes, if I can collect my notes.
8 THE COURT: All right. You may step down now.
9 Members of the jury, we'll take our recess,

10 which, just as with all recesses, please avoid
discussion about

11 the case or anything connected with the trial with
other jurors

12 and all other persons and continue to avoid anything
outside of

13 our evidence that could relate to the issues to be
decided.

14 We'll -- we're going to go till 1:00 today, as
has

15 been our Friday custom. This is Friday. We remember
that.

16 And we'd like to go forward without another break; but
if we

17 need to, we'll take another break, so we'll just see
how it

18 goes.

19 You're excused now, 20 minutes.

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

21 MR. TIGAR: May I approach, your Honor.

22 THE COURT: Yes.

23 (At the bench:)

24 (Bench Conference 95B2 is not herein transcribed by
court

25 order. It is transcribed as a separate sealed
transcript.)

1 (In open court:)

minutes. 2 THE COURT: All right. We'll recess. 20

3 (Recess at 10:29 a.m.)

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1 REPORTER'S CERTIFICATE

transcript from 2 I certify that the foregoing is a correct

Dated 3 the record of proceedings in the above-entitled matter.

4 at Denver, Colorado, this 28th day of November, 1997.

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Paul Zuckerman

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