

21
22
23
24
Transcription
Street,
629-9285

Proceeding Recorded by Mechanical Stenography,
Produced via Computer by Paul Zuckerman, 1929 Stout
P.O. Box 3563, Denver, Colorado, 80294, (303)

12053

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,
JAMIE
6 ORENSTEIN, and AITAN GOELMAN, Special Attorneys to the
U.S.
7 Attorney General, 1961 Stout Street, Suite 1200,
Denver,
8 Colorado, 80294, appearing for the plaintiff.
9 MICHAEL TIGAR, RONALD WOODS, ADAM THURSCHELL,
and
10 REID NEUREITER, Attorneys at Law, 1120 Lincoln Street,
Suite
11 1308, Denver, Colorado, 80203, appearing for Defendant
Nichols.

12

* * * * *

13

PROCEEDINGS

14

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

15

THE COURT: Please be seated.

16

Good morning.

17

Housekeeping

MR. WOODS: Good morning, your Honor.

18

matter.

19

THE COURT: Okay.

20

Smith, the

MR. WOODS: During the testimony of Agent

21

Josh

FBI, we played a tape recording of Lana Padilla and

22

Nichols.

23

THE COURT: Yes.

24

asked

MR. WOODS: That exhibit was 1652. The Court

25

that's D1652A

for a transcript of that to be in the record, and

12054

1

that we offer into evidence at this time.

2

It will

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

3

be a part of the record.

4

Government

MR. WOODS: Yes, your Honor. And the

5 provided the transcript, so they consent to it.

6 THE COURT: Good. Thank you.

7 Are we ready to then proceed with Mr. Elliott?

8 MR. WOODS: Yes, your Honor.

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

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

11 JURORS: Good morning.

12 THE COURT: Once again, we appreciate the
extra effort

13 that I know some of you had to make in view of the
weather this

14 morning, so thank you very much for your prompt
arrival.

15 We'll continue with our trial. You will
recall that

16 yesterday when we recessed, we were hearing testimony
from

17 Mr. Eldon Elliott, and we'll resume with his testimony
now.

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

19 that you took with us yesterday.

20 THE WITNESS: Here?

21 THE COURT: Yes, please.

22 And, Mr. Woods, you may continue.

23 MR. WOODS: Thank you, your Honor.

24 (Eldon Elliott was re-called.)

25 DIRECT EXAMINATION CONTINUED

12055

Eldon Elliott - Direct

1 BY MR. WOODS:

2 Q. Good morning, Mr. Elliott.

3 A. Good morning.

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

8 A. Right.

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

11 A. That's correct.

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

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

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

16 A. Yes, I did.

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

19 A. Yes.
20 Q. Well, can you tell the jury, then, what you recall
about
21 this transaction. The rental agreement reflected that
it was
22 rented on April the 17th, Monday; is that correct?
23 A. That's correct.
24 Q. To a Mr. Robert Kling?
25 A. Right.

12056

Eldon Elliott - Direct

1 Q. Now, had you met or talked with Mr. Kling prior to
that
2 date of April the 17th?
3 A. Yes, I had.
4 Q. Would you tell the jury what day that was, sir.
5 A. That was on April the 15th, on Saturday.
6 Q. Okay. What time do you open up your business on
Saturday?
7 A. We open up at 8:00, but I normally get there around
7:30.
8 Q. And how long did he stay?
9 A. We stay -- we stayed till about 10 to 11:00.
10 Q. When you say "we," is your shop open, doing body
work or
11 anything, or what?
12 A. No, whichever's there, if I'm there, I stay later.

If I

13 have the gal there, well, she leaves earlier than what
I do.

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

15 shop open?

16 A. Just for Ryder on Saturday mornings.

17 Q. What time was it that you had any conversation with

18 Mr. Kling that day?

19 A. When he came in to pay for the -- put the deposit
down and

20 make the reservation on the truck. He'd got a quote
the day

21 before, and he came in to pay so he could make a
reservation to

22 have the truck there.

23 Q. Do you recall about what time that was?

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

25 Q. And was he by himself that day?

12057

Eldon Elliott - Direct

1 A. Yes, he was.

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

3 recall?

4 A. He just said he had got a quote the day before and
he would

put it 5 like to make a reservation on that. And I pulled up --
to make 6 in the computer to pull up his name in the reservation
for the 7 the quote; and I said, "You want to put the \$80 down
8 reservation?"

truck 9 He said, no, he wanted to pay for the whole
that the 10 rental while he had the money so he didn't spend it so
up. 11 truck would be ready for him when he come to pick it

recall? 12 Q. Okay. And what was the total amount, if you

it was 13 A. I believe it was, with the deposit and everything,
14 \$280.32.

to pull 15 Q. Now, you mentioned that you got into the computer
16 up the quote; is that correct?

17 A. Yes.

paid the 18 Q. And then you filled out some information when he
19 full amount?

20 A. Yes.

Exhibit 21 Q. I'm going to show you what's in evidence as Defense
22 1709. And can you see that well enough on the screen,
23 Mr. Elliott, to recognize the date on there?

15th of 24 A. Yeah, up in the right-hand corner, it's April the
25 '95.

12058

Eldon Elliott - Direct

of the 1 Q. Okay. Now, is this the form that was printed out
day? 2 computer based on what information you put into it that

able to 3 A. If this is the reservation, it would be. I'm not
4 read whether that's reservation or quote.

light 5 Q. Let me hand you the original since this is such a
6 copy here.

Honor? 7 MR. WOODS: May I approach the witness, your

8 THE COURT: Yes.

9 BY MR. WOODS:

that one? 10 Q. This is a copy we've been provided. Can you read

out for 11 A. Yes, I can. This is the reservation that I printed
12 him.

Mr. Kling 13 Q. Now, what type of information did you obtain from
14 in order to put onto the form?

except 15 A. The -- just -- everything was on the form about

16 going in the reservation, I asked for his driver's
license at

17 that time; and then I printed this out to where it
showed that

18 he's paying the money and the balance due would be
zero.

19 Q. Okay. What type of information did you take from
his

20 driver's license?

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

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

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

24 Q. Okay. And was that typed in correctly, or did you
make any

25 misspellings, or do you know?

12059

Eldon Elliott - Direct

1 A. I don't remember.

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

3 A. M-A-L-P Drive.

4 Q. M-A-L-P?

5 A. Yes.

6 Q. Okay. Do you recall whether or not it was Maple,
or was it

7 M-A-L-P?

8 A. I don't remember.

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

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

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

14 A. Yes, I did.

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

17 have it orally related?

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

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

22 A. Best I recall.

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

24 A. In cash.

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

12060

Eldon Elliott - Direct

1 A. Yes, it was.

Mr. Kling 2 Q. How long did the transaction take between you and
3 there in the office that day?
4 A. I would say probably 10 to 15 minutes.
5 Q. So you had a chance to observe him fairly closely?
6 A. Yes.
7 Q. Just the two of you in the office at that time?
8 A. That's correct.
9 Q. Okay. Do you recall how he was dressed that day?
I've got 10 A. All I remember he had on was just a T-shirt 'cause
the 11 a counter kind of like this here, and he's standing on
12 other side; and so all that was showing was just the
top part 13 of his -- upper part.
14 Q. Yes, sir. Now, later on, the FBI gave you a photo
lineup, 15 and you identified Mr. McVeigh; is that correct?
16 A. Yes, sir.
17 Q. Okay. Based upon you having seen him and talked
with him 18 that day, Saturday, and then also on Monday; is that
correct? 19 A. That's correct.
20 Q. Okay. Do you recall any other conversation that
happened 21 there in the office that day, Saturday, that would be
helpful

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

12061

Eldon Elliott - Direct

1 driver, he wasn't going that awful far and he had drove
the big
2 trucks out at Fort Riley and he didn't need insurance.
3 And I said, "At this time, I need to explain
to you,
4 if you're not taking insurance, that you are liable for
the
5 damage on the truck or the cost of the truck if it was
totaled
6 out."

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

11 And he said, "Okay. Thank you."
12 Q. Now, is that your policy, you don't require
insurance on
13 the rental; is that correct?

to 14 A. They don't have to take the insurance, but we have
-- they 15 explain to them that they are responsible and then it's
responsible 16 sign that when they sign the contract that they're
17 for the truck if they don't take insurance.

you 18 Q. Okay. Now, did Mr. Kling sign this document that
19 prepared that day, Saturday?

20 A. Yes, he did.

21 Q. Sign that in front of you?

22 A. Yes, he did.

contact 23 Q. Okay. Now, when was the next time that you had any
24 with Mr. Kling?

25 A. On Monday.

12062

Eldon Elliott - Direct

1 Q. And is that April the 17th?

2 A. Yes, it was.

3 Q. Do you recall approximately what time it was?

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

Saturday that 6 Q. Okay. Now, that form that you filled out on

7 Mr. Kling signed, did you leave that for Vicki Beemer,
your
8 employee there, for Monday to book the reservation?
9 A. Yes, I did. Mr. Kling got a copy, and then two
copies is
10 kept for us.
11 Q. Okay.
12 A. And they was there for Vicki on Monday morning.
13 Q. Was there a time specified that the truck was to be
ready
14 for Mr. Kling?
15 A. Yes, it was.
16 Q. What time was that, sir?
17 A. He wanted it around 4:20 in the afternoon.
18 Q. Okay. Was that on your reservation form, did it
say 4:20?
19 A. I don't believe it puts a time on.
20 Yes, on the thing it was for 1600 hours on
4-20 -- on
21 4-17 of '95, was supposed to pick it up at 1600 hours.
22 Q. And that's 4:00?
23 A. That's 4:00.
24 Q. Okay. And that's the information, then, that you
left for
25 Vicki for Monday morning, to make sure a truck was
available

Eldon Elliott - Direct

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

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

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

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

7 Q. Where were you that afternoon?

8 A. I was out in the shop working.

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

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

12 Q. Okay. Doing mechanic work or bodywork?

13 A. It would be bodywork.

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

16 A. Vicki Beemer come out with the walk-around
inspection sheet

17 and said, "You need to come in and inspect this truck
for me,"

18 because we always inspected the trucks.

19 Q. Okay.

20 A. And so I walked in the office with her and took the
21 inspection sheet and --

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

23 A. Yes, I did.

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

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

12064

Eldon Elliott - Direct

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

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

4 Q. Did you mention anything to him about insurance?

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

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

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

10 A. Yes.

11 Q. -- occasion?

12 A. Yes, it was, your Honor.

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

15 A. No, it wasn't.

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

17 THE COURT: I don't know if the question and
the

18 answer matched there. No, it wasn't the same
individual, or no

19 question?

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

21 BY MR. WOODS:

22 Q. My question was was there any doubt in your mind
that it

23 was the same person.

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

25 person.

12065

Eldon Elliott - Direct

1 MR. WOODS: Thank you, your Honor.

2 BY MR. WOODS:

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

4 A. Yes, I did.

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

6 A. No, he did not.

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

8 A. Yes, it was just a real slight mist. It was so
slight, you

9 know, I wouldn't call it a rain, but it was a real
light mist.

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

11 whatever?

12 A. Well, it wasn't hot. It was cool in the spring.
It wasn't

13 hot, but it wasn't real cold, either.

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

16 A. Probably a minute or two.

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

18 THE COURT: Yes.

19 BY MR. WOODS:

20 Q. Mr. Elliott, I've handed you what is admitted into
evidence

21 as Defense 1712. Do you recognize that copy, sir?

22 A. Yes, I do.

23 Q. And would you tell the jury what that copy is in
your

24 business records, how you utilize it.

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

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

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

14 Q. Okay.

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

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

18 A. Yes, I did. There was little, light like limb
marks down

front 19 both sides of the truck and a little mark on the left
says 20 bumper; and then down below here, I circled where it
21 "scratches" and such as that on the truck.
22 Q. Did you say "limb marks"?
scratched the 23 A. Well, like tree-limb marks that might have
24 paint real lightly.
25 Q. Yes, sir.

12067

Eldon Elliott - Direct

1 A. No damage, but just real light marks; but I
indicated it.
2 Q. Yes, sir. How long did that take you to do the
walk-around
3 and inspection?
4 A. Probably about 1 to 2 minutes.
5 Q. What did you next do?
6 A. Then I walked back inside and showed him the
inspection
7 slip and then give it to Vicki and told him to have a
safe trip
8 and if he was ever in the area and we could help him
again,
9 why, come in and see us.
10 Q. When you were in the office, how many people did
you

11 observe in the office?
12 A. It was Mr. Kling standing there and my mechanic,
Tommy
13 Kessinger, setting there. There was another gentleman
standing
14 in there with Mr. Kling, and Vicki Beemer was in the
office,
15 beside myself.
16 Q. Okay. And did you have any conversation with the
other
17 individual, or just with Mr. Kling?
18 A. Just with Mr. Kling.
19 Q. Okay. When you were out making the inspection, did
you
20 notice an automobile outside?
21 A. They was an automobile setting there, yes.
22 Q. Okay. And can you tell the jury, just give a
description
23 as best you recall at that time.
24 A. It was -- I just took a short glance at it, and it
was a --
25 what I could remember, it was either a medium-size or a

12068

Eldon Elliott - Direct

1 full-size, light-color car.
2 Q. Okay. And were there any other customers inside
the office
3 other than those two individuals?

4 A. No, they was not.

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

7 A. No, it wasn't.

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

11 A. I was inside the office when he came in. And just
as he
12 got ready to leave, the phone rang, and I answered it.

And I
13 did not see what kind of car he was driving. In our
office,
14 our windows is a little high. Unless you're standing
up and
15 looking, you can't see out of them.

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

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

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

21 A. Yes, I did.

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

23 A. It's just right at a mile or maybe just a fraction.

I call

over a 24 it a mile out of town. It might be just a little bit

25 mile from Washington Street, the main street in town.

12069

Eldon Elliott - Direct

they come 1 Q. Did most people walk, or come by automobile when

2 to your business?

some 3 A. Well, they mostly come by automobiles. We have had

majority comes 4 walk. We have had some ride a bicycle, but the

5 by car, yes.

is that 6 Q. So you're pretty much a mile out, isolated there;

7 correct?

8 A. That's right.

9 Q. Are you up on sort of a hill?

probably 10 A. Yes, we're on a side hill. Our building sets

tapered 11 foot above the road, and then it goes into a nice, big,

Ryder 12 bank back up. I have the top part leveled off for the

13 trucks to set up there.

the 14 Q. Okay. Now, back on Monday, again, when you were in

15 office there, it was a very short period of time, I
take it; is

16 that correct?

17 A. That's correct.

18 Q. Did you observe Mr. Kling have any conversation
with the

19 other individual?

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

21 what they was saying.

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

23 A. Wasn't paying no attention.

24 Q. Did you give a description of the other individual
in any

25 form or fashion?

12070

Eldon Elliott - Direct

1 A. No. Not really. I just took a glance at him. And
the hat

2 that he had on, and I can't tell you what he really
looked

3 like.

4 Q. Okay. Could you tell the jury whether or not he
was

5 shorter or taller than Mr. Kling?

6 A. To be truthfully, no. He might have been just a
little

7 shorter than Mr. Kling.

8 Q. And how do you make that conclusion?

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

10 Q. How tall are you, sir?

11 A. About 5' 10".

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

13 A. Yes, it was.

14 Q. Now, did Mr. Crabtree ask you pretty much those
same
Wednesday

15 questions when he came to visit you that afternoon,
16 afternoon, the 19th?

17 A. Yes.

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

19 A. Yes, I did.

20 Q. Now, on that contract you have in front of you, is
that the
a phone

21 one that has Mr. Russell's name written at the top and
22 number?

23 A. Yes, it is, sir.

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

Eldon Elliott - Direct

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

3 Q. These were all separate; is that correct?

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

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

8 A. Yes.

9 Q. And what was that explanation?

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

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

15 A. That's correct.

16 Q. And did you get to Topeka?

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

21 artist in.
22 Q. And how long did you stay there at Fort Riley in
the CID
23 office? That evening.
24 A. I'm going to say it was probably two, two-and-a-
half hours,
25 something like that, maybe.

12072

Eldon Elliott - Direct

1 Q. So did you leave and go home before the sketch
artist
2 arrived?
3 A. Yes, we did.
4 Q. What time did you leave, approximately?
5 A. Well, I'm going to say we probably left Fort Riley
about 7,
6 7:30, somewhere along in there.
7 Q. Did Mr. Crabtree interview you separately out there
at Fort
8 Riley before you went home that night?
9 A. I was interviewed separately. I don't really
remember who
10 it was that interviewed me that night out there.
11 Q. Did more agents arrive on the scene there at the
CID
12 office?
13 A. They was the next morning, but I don't know if they

was

14 that evening.

15 Q. At any rate, you went home at sometime on the
evening of

16 the 19th; is that correct?

17 A. That's correct.

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

19 A. They said, "Go home and get a good night's sleep,
and we'll

20 call you when the sketch artist get in and you'll come
back out

21 in the morning."

22 Q. Did you receive a phone call?

23 A. That evening?

24 Q. Yes, sir.

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

12073

Eldon Elliott - Direct

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

2 A. Yes.

3 Q. Was what the nature of the calls?

4 A. Well, first off, they wanted to know what the
number was on

5 the top of the -- this inspection form, and I told
them. So

6 then later on, they called again and wanted to know
what the

7 other number was on the top of the inspection form.

8 Q. What is the other number?

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

10 Q. And what was the first number?

11 A. The first one was his office phone number.

12 And then we got another call about -- probably
3:30,

13 4:00 in the morning and said we needed to -- I needed
to meet

14 Vicki at the shop and bring her out to Fort Riley, so I
came in

15 and we went from the shop to Fort Riley. Vicki's
husband

16 brought her in. So they drove out, and I drove out to
Fort

17 Riley to the CID office.

18 Q. And when you got to the CID office, were you
interviewed

19 again by the FBI?

20 A. Yes, I was.

21 Q. And was that separate, away from the other
individuals,

22 Miss Beemer -- was Mr. Kessinger out there at that
time?

23 A. Mr. Kessinger I think was already out there when we
got

24 there with the sketch artist.

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

were

12074

Eldon Elliott - Direct

1 apart from the other people?

2 A. Yes, it was.

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

4 A. Well, I believe we got to leave Fort Riley that
morning

5 about -- I got to leave about 7:00.

6 Q. Okay. And did you meet privately with the sketch
artist

7 and take part in compiling a sketch?

8 A. Yes, I met separate with him. And he asked me some
9 questions, and then he showed me a sketch that he had
made with

10 Mr. Kessinger and asked me if I could add anything to
it, and I

11 says no.

12 Q. That was my next question. Did you take part in
compiling

13 the sketch, or had it already been done by the time
that they

14 met with you?

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

16 Q. Let me show you what's in evidence as D1699 and ask
if you

17 recognize this as the sketch that was shown to you?

18 A. Yes, it was.
19 Q. That's one that was shown to you that night of the
19th?
20 A. Well, I can't say this is exactly the one, but I
think
21 that's the one, a picture of the one I seen.
22 Q. Okay. And you were asked if you could add or
delete
23 anything from the sketch?
24 A. Right.
25 Q. And what did you tell them?

12075

Eldon Elliott - Direct

1 A. I said, no, that looks -- that looks like what it
was.
2 Q. Okay. Were you shown another sketch that evening,
or just
3 this one?
4 A. I think it was just this one.
5 Q. You remember who the sketch artist was, what his
name was?
6 A. No, I don't. They flew him in from Washington,
D.C.
7 MR. WOODS: Your Honor, may I approach the
witness?
8 THE COURT: Yes.
9 BY MR. WOODS:
10 Q. Mr. Elliott, I'm going to hand you what's been

marked for

11 identification purposes only as D1707 and D1708 and ask
if you

12 have seen either one of those before, sir.

13 A. Yes, I had.

14 Q. Where did first see -- what -- can you tell us
which one

15 you saw, or did you see both of them?

16 A. I seen two copies that day.

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

18 white?

19 A. I think they was both black and white.

20 Q. Okay. And who showed you the items?

21 A. I don't remember all the names. We was in Oklahoma
City,

22 and Jon Hersely was there.

23 Q. This agent right over here on the end of the table,

24 Mr. Hersely?

25 A. Yes.

12076

Eldon Elliott - Direct

1 Q. Okay. And who else?

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

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

4 their names.

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

6 A. Yes, I believe it was.

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

8 A. Pictures like this.

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

10 identification?

11 A. Yes, I did.

12 Q. And did you identify Timothy McVeigh?

13 A. Yes, I did.

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

16 A. Yes, it was.

17 Q. Okay. And are those copies of the -- can you look
at those

18 and see if those are the copies of photo lineup that
you were

19 shown?

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

21 Q. There's a signature on the back of the black-and-
white one.

22 Is that your signature, or is that just a notation
that's been

23 given to us?

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

into 25 MR. WOODS: Okay. Your Honor, we would offer

12077

Eldon Elliott - Direct

One of 1 evidence 1607 and '8. Been provided by the Government.

2 them's a color copy and one's black and white.

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

it 1607? 4 THE COURT: All right. They're received. Is

and 5 MR. WOODS: I'm sorry, your Honor. It's 1707

6 1708.

7 THE COURT: All right. Received.

8 BY MR. WOODS:

time you 9 Q. Now, Mr. Elliott, I take it because of the short

10 saw the second person, you cannot make an
identification of him

11 in any form; is that correct?

12 A. No, I cannot.

much, 13 MR. WOODS: Okay. Mr. Elliott, thank you very

14 sir. Nice to have met you.

15 THE COURT: Mr. Mearns.

16 CROSS-EXAMINATION

17 BY MR. MEARNS:

18 Q. Good morning, Mr. Elliott.

19 A. Good morning.

20 Q. You told us yesterday afternoon that you've been in
the

21 body-shop business for about 27 years?

22 A. In my own business 27 years.

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

24 A. I worked for Chevrolet garage for 16 1/2 years
before I

25 opened my own shop.

12078

Eldon Elliott - Cross

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

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

3 years.

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

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

6 Q. I want to direct your attention first to the
morning of

7 Saturday, April 15, that you've spoken about a little
bit this

8 morning, okay?

9 A. Okay.

10 Q. You told us that Robert Kling or Bob Kling came in
at about

11 8:45; is that right?

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

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

14 A. Yes, I did.

15 Q. And during that 10 or 15 minutes, would it be fair
to say

16 that you had an opportunity to observe his face from a
very

17 close distance?

18 A. Yes, it was.

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

20 lighting?

21 A. Right.

22 Q. And you had an opportunity to talk with him at some
length

23 about this Ryder rental truck that he was going to get?

24 A. Yes, I did.

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

12079

Eldon Elliott - Cross

1 him so long that you've been able to identify Mr. Kling
as in

2 fact being Mr. McVeigh; is that right?

3 A. That's right.

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

7 A. That's right.

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

11 A. Probably not over a minute or two.

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

15 A. Probably not quite that long.

16 Q. Less than a minute on that?

17 A. Probably around a minute or less.

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

20 A. When I came back in, yes.

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

23 A. Yes, he was.

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

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

12080

Eldon Elliott - Cross

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

4 A. Yes, I did.

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

8 A. I took the glance at the second person when I
walked out --

9 or when I first came in to do the walk-around, just a
glance at

10 him; and when I come back in, I glanced at him as I
turned and

11 handed the walk-around to the -- to Vicki and talked to
12 Mr. McVeigh.

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

14 Just a second?

15 A. Oh, probably less than a second.

16 Q. Less than a second that you saw him?

17 A. Right.

18 Q. And the only thing that you can recall about him is
the hat

19 that he was wearing; is that correct?

20 A. That's right.

21 Q. Describe that hat for us, please.

22 A. It was a white hat with like lightning, blue
lightning

23 strikes going back the side. And it was kind of
unusual. That

24 was the only reason I really glanced at it, because it
was

25 unusual.

12081

Eldon Elliott - Cross

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

2 A. It was all kind of white with just blue lightning
stripes

3 going back the side.

4 Q. So it was white and blue with the blue strikes
going

5 towards the back?

6 A. Right.

7 Q. Now, with respect to this -- the other person that
you saw,

8 did you talk to him on April 17?

9 A. The second person?

10 Q. Yes.

11 A. No, I did not.

12 Q. And did he speak to you at all?

13 A. No.

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

15 A. Not to Miss Beemer, no.

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

17 A. No.

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

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

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

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

12082

Eldon Elliott - Cross

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

2 two.

3 Q. Okay. So was this other person closer to Mr.
Kessinger or

4 was -- let me ask it a different way.

5 Was Mr. McVeigh closer to Mr. Kessinger, or
was this

6 other person closer to where Mr. Kessinger was sitting?

7 A. Well, they would probably be both about the same
distance

8 because he was kind of standing in the corner of the
office,

9 and McVeigh was standing right at the corner of the
counter.

10 So maybe Mr. McVeigh was a little closer to Tom.

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

12 A. No, I cannot.

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

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

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

16 A. No, I can't.

17 Q. Can you tell us how much he weighed?

18 A. No.

19 Q. Mr. Woods asked you about a couple of occasions on
when you

20 spoke to Agent Crabtree or other FBI agents on April 19
and

21 April 20. Do you recall those questions?

22 A. Right.

23 Q. Now, Mr. Crabtree came to your office, you said,

about

24 4:00, 4:30 on April 19; correct?

25 A. Right.

12083

Eldon Elliott - Cross

1 Q. And he interviewed on that occasion; right?

2 A. Right.

only

3 Q. And do you recall telling Agent Crabtree that you

on the

4 remembered one person, Mr. Kling, being in the office

5 afternoon of April 17?

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

witness?

7 MR. MEARNS: Your Honor, may I approach the

8 THE COURT: Yes.

9 BY MR. MEARNS:

in

10 Q. Mr. Elliott, if you would take a look at that, and

you'd

11 particular there's one sentence highlighted there. If

12 read that to yourself.

told

13 Does that refresh your recollection that you

only

14 Agent Crabtree on the afternoon of April 19 that you

Kling,

15 recalled one person being in the shop, one person, Mr.

16 or Mr. McVeigh, on the afternoon of April 17?
17 A. I still don't remember telling him that.
18 Q. With respect to the other person, Mr. McVeigh and
the other
19 person that was there, that you say was there on April
17, you
20 don't know if they were actually together or not, do
you?
21 A. I can't say that they was actually together, no.
22 Q. You didn't see them come into the office together?
23 A. No, I did not.
24 Q. You didn't see them leave together?
25 A. No, I did not.

12084

Eldon Elliott - Cross

1 Q. And with respect to the car that Mr. Woods asked
you about,
2 you don't know if that was the car that Mr. McVeigh
arrived in
3 that day?
4 A. No, I don't know that was the car.
5 Q. In fact, you don't know how Mr. McVeigh got to your
shop on
6 April 17?
7 A. That's right.
8 Q. In fact, you -- on April 15, on Saturday, you heard
him get

right? 9 into a car, close the door and drive away; is that

10 A. That's right.

to the 11 Q. But on April 17, you don't know whether he walked
right? 12 store or whether he was driven to your shop; is that

13 A. That's right.

quite 14 Q. And would it be fair to say that cars come and go
15 frequently from your shop there, from the body shop?

16 A. Sometimes.

bodywork 17 Q. People are coming there to drop off cars to get
18 done; right?

19 A. Right.

overnight; 20 Q. And people are leaving cars there sometimes
21 right?

22 A. Sometimes.

that 23 Q. Mr. Woods asked you a question about being shown

recall 24 sketch, that one sketch that he showed to you. Do you

25 that question?

12085

Eldon Elliott - Cross

1 A. Right.

hours 2 Q. And you were shown that sketch in the early morning

3 of April 20; is that right?

4 A. Yes, it was.

show you 5 Q. And the -- Mr. Rozycki or the sketch artist didn't

6 the sketch of any other person, did he, that morning?

7 A. No, he did not.

-- Agent 8 Q. And just one final area. On April 19, when Agent

9 Crabtree called before he showed up; is that right?

10 A. On the 19th?

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

12 A. Yes, he did.

make 13 Q. And among other things, Agent Crabtree told you to

14 sure none of the employees left; is that right?

15 A. Yes.

that 16 Q. And to try to identify -- to find the documents

17 related to the Kling rental; is that correct?

18 A. That's correct.

could 19 Q. And he also asked you to try to find out who else

right? 20 have seen the Mr. Kling who rented the truck; is that

21 A. That's right.

22 Q. And prior to Agent Crabtree arriving, you had

already

is, 23 identified Mr. Kessinger as the other person -- that
Kling on 24 besides you and Miss Beemer -- who could have seen Mr.
25 the afternoon of April 17; right?

12086

Eldon Elliott - Cross

1 A. Right.
2 Q. And you did that, you were able to do that by
having 3 Ms. Beemer speak to Mr. Kessinger about the rental;
right? 4 A. Right.

5 MR. MEARNS: No further questions, your Honor.

6 THE COURT: Any follow-up?

7 MR. WOODS: Yes, your Honor.

8 REDIRECT EXAMINATION

9 BY MR. WOODS:

10 Q. Mr. Elliott, when -- Mr. Crabtree asked you not to
talk 11 amongst yourself before he got there; is that correct?

12 A. I don't remember if he said not to talk -- 'cause
he wanted 13 to find out who was -- could have seen anybody in
there.

14 Q. Okay. Did you and Mr. Kessinger and Miss Beemer
talk

15 amongst yourselves about the description of the
individual --

16 A. No, we just -- before Mr. Crabtree got there? No,
we did

17 not. We talked about the contract, and she started
asking the

18 employees who was in there, and that's when she found
out Tom

19 was setting in there.

20 Q. And when Mr. Crabtree interviewed you the afternoon
of the

21 19th and the early morning hours of the 20th, was that
on your

22 recollection, or what somebody else had told you?

23 A. Would you repeat that?

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

12087

Eldon Elliott - Redirect

1 were you giving him your memory of what you recalled,
or was it

2 something that somebody else had told you?

3 A. No, it was my memory, sir.

4 Q. Okay. Now, the prosecutor asked you about
possibility of

5 Mr. McVeigh walking there that afternoon of the 19th
(sic).

6 When you saw him and asked him about had you changed
your mind

7 about insurance, was his face wet, or was his upper
clothes

8 wet?

9 A. No, it was not.

10 Q. And it was misting out at that time?

11 A. Yes, it was.

12 Q. Okay. Now, Mr. Mearns, the prosecutor, asked you
about

13 this individual. Did you see him leave with Mr.
McVeigh? You

14 had gone back to the shop; is that correct?

15 A. That's right.

16 Q. Do you know whether or not your business conducted
any

17 other rental right after Mr. McVeigh left with the
other

18 individual that was there?

19 A. No, it did not.

20 Q. Okay. Did it conduct any other business, auto
repair or

21 body shop?

22 A. Not to my knowledge.

23 Q. Did you see that individual anytime after there in
your

24 shop from 4:20 on?

25 A. No, I did not.

Eldon Elliott - Redirect

1 Q. What time do you close up?

2 A. Closed at 5:00.

3 Q. You recall that light-color sedan being in the lot
when you

4 closed up at 5:00?

5 A. No, it was not.

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

7 Appreciate it.

8 MR. MEARNS: No further questions, your Honor.

9 THE COURT: Mr. Elliott --

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

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

12 MR. MEARNS: Yes, your Honor.

13 THE COURT: He may be excused.

14 All right. You're excused.

15 THE WITNESS: To go home, your Honor?

16 THE COURT: Yes.

17 MR. NEUREITER: May Mr. Bodley be excused to
try and

18 procure the presence of a witness?

19 THE COURT: Yes.

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

21 THE COURTROOM DEPUTY: Raise your right hand,
please.

22 (Raymond Rozycki affirmed.)

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

24 Would you state your full name for the record
and

25 spell your last name.

12089

I. 21 THE WITNESS: Raymond T. Rozycki, R-0-Z-Y-C-K-

22 THE COURTROOM DEPUTY: Thank you.

23 THE COURT: Mr. Woods.

24 MR. WOODS: Thank you.

25 DIRECT EXAMINATION

26 BY MR. WOODS:

I'm one 27 Q. Good morning, Mr. Rozycki. My name is Ron Woods.

28 of the lawyers that was appointed by the district judge
to

29 represent Terry Nichols in this case.

30 You and I have never met; is that correct?

31 A. That's correct.

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

33 A. I'm employed by the FBI.

34 Q. Yes. As what?

35 A. And my job title there is a visual information
specialty,

16 and I work as a forensic artist.

17 Q. And would you tell the jury what a visual
information

18 specialty is in general terms.

19 A. In this case, a forensic artist is an artist who
uses his

20 artistic skills during the course of criminal
investigation or

21 trial.

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

23 A. 16 years.

24 Q. And what is your education background and your
experience

25 background that qualified you for this position?

12090

Raymond Rozycki - Direct

1 A. I have a degree, a bachelor of fine arts in
painting and

2 printmaking. I came to the FBI during the course of my
work

3 there, had much on-the-job experience and was trained
at the

4 FBI school for composite art.

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

6 A. Yes, sir, I did.

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

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

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

14 A. Figure and portrait work.

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

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

18 Q. 16 years' experience?

19 A. About.

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

23 A. Now it's roughly in the area of . . . it's between
25 and
24 30.

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

Raymond Rozycki – Direct

you
1 in connection with the Oklahoma City bombing case. Did

sir?
2 work -- did you have an occasion to work on that case,

3 A. Yes, sir.

that
4 Q. Will you tell the jury when you first received word

5 your services were needed in connection with that

6 investigation.

that I
7 A. That was on the 19th when I was at home and told

8 needed to get to Kansas.

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

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

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

12 A. No, I haven't.

13 Q. Been working on other cases?

14 A. Yes, sir.

receive
15 Q. Approximately what time on April the 19th did you

16 word that you needed to go to Kansas?

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

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

me at
19 A. I took a small plane. They had a plane waiting for

20 National Airport, and took a small plane to Kansas

City, and a

21 state trooper drove me to Junction City.

22 Q. Was this an FBI plane?

23 A. I'm not really sure.

24 Q. When you say "a small plane," you didn't catch a
commercial

25 plane; is that --

12092

Raymond Rozycki - Direct

1 A. No, sir.

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

3 Junction City?

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

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

6 A. Agent Crabtree and Agent Smith, I believe.

7 Q. Is that Steve Smith?

8 A. Yes, sir.

9 Q. Just two agents?

10 A. Correct.

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

12 A. The agents are the first on the scene, and they
make the

13 assessment of whether my services are necessary. And
they had

14 the information -- any information that I would need in

15 starting the drawings.

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

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

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

23 A. Their assessment of -- excuse me -- the witnesses
--
24 telling me who the witnesses were. Their assessment of
who was
25 the best one -- who had the best recollection, and the
order to

12093

Raymond Rozycki - Direct

1 start with on those witnesses.

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

4 A. Yes, I did.

5 Q. Who did you meet with first?

6 A. Mr. Kessinger.

7 Q. Did you meet with him separately?
8 A. No. No. There were two agents present initially
and in
9 the room with me and Mr. Kessinger.
10 Q. How long did the agents stay in the room with you?
11 A. Roughly a half an hour.
12 Q. Did you then continue to meet with Mr. Kessinger to
draw
13 your sketch?
14 A. That's correct.
15 Q. How long did that take?
16 A. Two to three hours.
17 Q. Can you give the jury just a brief description of
what
18 process you go through when you meet with a witness in
order to
19 draw a sketch from their memory?
20 A. Initially we sort of get to know each other,
exchange
21 pleasantries, and I tell them about the process that
we'll go
22 through, show them the forms, the form and the book --
23 Q. By "book," what do you mean?
24 A. It is the catalogue of facial -- the FBI facial
catalogue.
25 MR. WOODS: Okay. May I approach the witness,
your

Raymond Rozycki - Direct

1 Honor?

2 THE COURT: Yes.

3 BY MR. WOODS:

4 Q. Mr. Rozycki, I've handed you a item marked Defense
Exhibit

5 1730. Is that the number that's in the right corner?

6 A. That's correct.

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

8 A. Yes.

9 Q. And . . .

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

11 Honor, before we begin talking about it, 1730.

12 MR. MACKEY: No objection.

13 THE COURT: Received, D1730.

14 BY MR. WOODS:

15 Q. Now, is that the FBI's facial catalogue that you
use in

16 connection with interview of witnesses?

17 A. That's correct, yes.

18 Q. And without describing it in detail, tell the jury
briefly

19 what the facial catalogue contains.

20 A. It contains a number of faces, persons' faces
broken down

21 into categories, those being the shape of the face and

other

22 facial characteristics, the eyes, eyebrows, cheeks,
chin, ears,

23 and things of that sort, hair.

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

25 A. I believe, yes.

12095

Raymond Rozycki - Direct

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

2 A. That's correct. It varies.

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

4 A. The witness is instructed to look through the
catalogue,

5 first emphasizing the overall head shape and pick out

6 photographs -- and look at photographs and pick out

7 characteristics that closely resemble their
recollection of the

8 person that they saw.

9 Q. And approximately how long does this process take
on the

10 average, per witness?

11 A. It varies on their -- how deliberate they are and
how well

12 they remember the face. It can take half an hour to an
hour.

13 Q. Okay. On this particular occasion, did you draw

one sketch

with 14 of one individual or two sketches of two individuals

15 Mr. Kessinger?

16 A. Two sketches of two individuals.

17 Q. Okay. And how long did that take?

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

Exhibit 19 Q. I'm going to show you what's in evidence as Defense

Rozycki? 20 1699. Is that one of the sketches you drew, Mr.

21 A. Yes, sir, it is.

you 22 Q. Okay. You put your initials on it anywhere, or can

23 just recognize it as one that you drew?

can 24 A. Often or -- often I put my initials on it, and I

25 recognize this as one I drew.

12096

Raymond Rozycki - Direct

evidence as 1 Q. Okay. And I'm also going to show you what's in

your 2 Defense 1731. Is this the second sketch you drew after

3 interview with Mr. Kessinger?

4 A. Yes, it is.

Kessinger, did 5 Q. Okay. Now, after your interview with Mr.

6 you have a meeting and interview with any other
witnesses
7 present there at Fort Riley there that evening?
8 A. Yes, I did.
9 Q. Who did you meet with first after Mr. Kessinger?
10 A. Mr. Elliott.
11 Q. Did you show one or both of the sketches to Mr.
Elliott?
12 A. I showed one of the sketches to Mr. Elliott.
13 Q. Which one, do you recall?
14 A. Our designation of Un. Sub. No. 1.
15 Q. And did Mr. Elliott indicate to you that he could
add or
16 delete anything from the sketch?
17 A. No, he couldn't. He could not add or delete
anything from
18 the sketch.
19 Q. What were his words, if you recall, how he
described that?
20 A. That, I can't recall exactly. His recollection was
very
21 scant about the individual.
22 Q. And as to Vicki Beemer, did you meet with her?
23 A. Yes, I did.
24 Q. And did you show her one or two of the sketches?
25 A. One of the sketches. The Un. Sub. No. 1, again.

12097

Raymond Rozycki – Direct

1 Q. And did she say she could add or delete anything
from the 2 sketch?

3 A. Nothing from the sketch. Her information was more
about a 4 remark that the individual made. That was mostly her
5 recollection of that.

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

7 A. It was about -- related to his birthday. It was in
that 8 time frame.

9 Q. Did she tell you that the sketch was not accurate
in any 10 way?

11 A. No, sir.

12 Q. Now, after you do the sketches -- excuse me. Were
there 13 any other witnesses that it was shown to there that
night in 14 your presence?

15 A. No, sir.

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

17 A. Copies are made and given to the agents, and at
that point 18 it goes out of my hands.

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

20 A. Correct.

21 Q. Did you take part in distributing the sketch --
22 A. No, sir.
23 Q. -- to potential witnesses?
24 A. No, sir.
25 Q. Did you take part in releasing it on national TV?

12098

Raymond Rozycki - Direct

1 A. No, sir.
2 Q. Did you see your sketches on national TV the next
day?
3 A. No. No.
4 Q. You don't watch TV?
5 A. Well, not at that point. I was traveling between
there and
6 Oklahoma City.
7 Q. When was the first time you saw your sketches on
TV?
8 A. On TV . . . I'm not -- I didn't watch much TV in
Oklahoma
9 City. I really don't know. It was after -- well after
the
10 fact.
11 Q. Did you, or did you not see your sketches on TV?
12 A. I don't recall.
13 Q. Okay.
14 A. Know that I saw them in newspapers, but I can't

recall on

15 TV.

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

18 A. Correct.

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

20 A. That's correct.

21 Q. Did you do anything in connection with these
witnesses in

22 Junction City down in Oklahoma City?

23 A. No, sir.

24 MR. WOODS: Thank you, Mr. Rozycki.

25 We pass the witness, your Honor.

12099

1 THE COURT: All right. Mr. Mackey.

2 CROSS-EXAMINATION

3 BY MR. MACKEY:

4 Q. Mr. Rozycki, the first time that you met Tom
Kessinger,

5 Eldon Elliott, and Vicki Beemer was in the early
morning hours

6 of Thursday, April 20, 1995; is that right?

7 A. That's correct.

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

9 A. In the jury room.

10 Q. In the witness room?

11 THE COURT: Not the jury room.

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

13 BY MR. MACKEY:

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

16 A. Yes, I have.

17 Q. As a forensic artist, it doesn't fall to you, I
take it,

18 Mr. Rozycki, to routinely interview fact witnesses to
develop
19 information about what a person might know or recall
about an

20 event; is that correct?

21 A. That's correct.

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

23 correct?

24 A. That's correct.

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

12100

Raymond Rozycki – Cross

1 arrived early that morning and talked to Agent Crabtree

and

2 Agent Smith; is that correct?

3 A. Yes, sir.

4 Q. And you relied entirely on their assessment of who
had the

5 best opportunity to observe and therefore who might
have the

6 most information to relay to you; correct?

7 A. That's correct.

8 Q. And the assessment that Agent Crabtree provided to
you was

9 of those three individuals, you should speak first to
Tom

10 Kessinger; correct?

11 A. Yes.

12 Q. His assessment was that Mr. Kessinger had the best
vantage

13 point; right?

14 A. Correct, yes.

15 Q. And that he had the best recall -- detailed recall
of what

16 he had seen on Monday, April 17th?

17 A. That's correct.

18 Q. You produced, based on your interview with Mr.
Kessinger

19 and only Mr. Kessinger, the exhibits that have been
shown to

20 you here, those two composites; is that correct?

21 A. Yes, sir.

22 Q. You showed to Mr. Elliott and Miss Beemer the
composite of
23 John Doe No. 1; correct?
24 A. Yes.
25 Q. You did not show the composite of John Doe 2 to
either

12101

Raymond Rozycki - Cross

1 Mr. Elliott or Miss Beemer, did you?
2 A. That's correct.
3 Q. Why didn't you do that?
4 A. Their recall of that individual was nonexistent,
virtually
5 nonexistent. And Mr. Elliott was not present when that
person
6 was there.
7 Q. Your understanding that neither Mr. Elliott or Miss
Beemer
8 had even the slightest amount of information sufficient
for you
9 as a forensic artist to display your work product and
say, "Can
10 you add or delete?"
11 A. That's correct.
12 Q. So you didn't even bother to show them Un. Sub. No.
2?
13 A. Again, right.
14 Q. And when shown Un. Sub. No. 1, they offered

absolutely no

15 other details; is that correct?

16 A. That's correct.

17 MR. MACKEY: I have nothing else.

18 MR. WOODS: Just short.

19 THE COURT: Yes, all right.

20 REDIRECT EXAMINATION

21 BY MR. WOODS:

22 Q. Mr. Rozycki, you just mentioned that Mr. Elliott
was never

23 present when John Doe 2 was present?

24 A. The space in time that we were talking about where
there

25 were two people in question, which is the time when

12102

Raymond Rozycki – Redirect

1 Mr. Kessinger and Miss Vicki Beemer were in the room
together

2 with these two individuals, Mr. Elliott was not
present.

3 Q. Okay. And you say that Mr. Elliott's recollection
of John

4 Doe No. 1 was vague?

5 A. Correct, yes.

6 Q. Did you learn that he had had two separate meetings
and two

7 conversations with John Doe No. 1?

8 A. No, sir.

9 MR. WOODS: Okay. Thanks, Agent Rozycki.

10 No further questions, your Honor.

11 MR. MACKEY: Nothing.

12 THE COURT: Is he excused?

13 MR. WOODS: Yes, sir.

14 THE COURT: Agreed, Mr. Mackey?

15 MR. MACKEY: Yes, sir.

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

17 Next, please.

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

19 THE COURTROOM DEPUTY: Raise your right hand,
please.

20 (John Davis affirmed.)

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

22 Would you state your full name for the record
and

23 spell your last name.

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

25 THE COURTROOM DEPUTY: Thank you.

12103

John Davis - Direct

1

DIRECT EXAMINATION

2 BY MR. WOODS:

3 Q. Good morning, Mr. Davis.

4 A. Good morning.

5 Q. Will you tell the jury where you live.

6 A. I live in Junction City, Kansas.

7 Q. How long have you lived there?

8 A. Since 1976.

9 Q. What's your occupation?

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

11 Q. And working for who?

12 A. Service Care of America, out of Atlanta.

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

14 A. It's a government contract.

15 Q. You work with the provost marshal?

16 A. Correct.

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

18 A. Since '94. November.

19 Q. During 1995, how were you employed?

20 A. I was working there part-time at the provost
marshal's

21 office, and I was also employed at Hunam Palace Chinese

22 restaurant in Junction City.

23 Q. Okay. I want to call your attention to April of
1995,

24 short time before and after the bombing in Oklahoma
City, which

25 was on April the 19th. Do you recall that time period?

12104

John Davis – Direct

1 A. Yes.

April the
that day
2 Q. And I specifically want to call your attention to
3 15th, the Saturday before the bombing. Did you work

4 for Hunam Palace?

5 A. Yes, sir, I did.

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

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

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

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

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

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

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

16 A. That was the third set of the owners.

17 Q. Changed hands three times?

18 A. Yes.

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

21 A. Yes.

22 Q. Was it the only one?

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

24 Q. How did you -- how did the business obtain call-in
orders?

25 Did you put pamphlets out in motels and businesses?

12105

John Davis - Direct

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

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

4 A. Yes.

5 Q. Based on your experience there, the number of
years, can

6 you give an estimation of what portion of the business
came

7 from motels and what portion of the business came from
the Fort

8 Riley or just private homes?

9 A. Fort Riley probably accounted for roughly 60
percent -- 60

10 to 70 percent of our take-out, the hotel would probably

account

11 for about 10, and then private in Junction would
account for

12 the rest.

13 Q. Okay. Now, did there come a time on the evening of
April

14 the 15th that you made a trip to the Dreamland hotel?

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

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

17 A. I got in around 5:30.

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

20 A. Yes, sir.

21 Q. How many?

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

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

24 A. Not offhand, no.

25 Q. Was it nearby, or was it --

12106

John Davis - Direct

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

2 Avenue.

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

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

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

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

7 THE COURT: Yes.

8 BY MR. WOODS:

9 Q. I'm going to show you what's been marked as D1739.
And do

10 you recognize that item, sir?

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

12 MR. WOODS: All right. We would offer into
evidence

13 D1739, your Honor.

14 MR. MACKEY: No objection.

15 THE COURT: Received, D1739.

16 BY MR. WOODS:

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

18 deliver?

19 A. Yes, it is.

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

21 A. It's the contents of the order, the last name, the
address,

22 and the phone number.

23 Q. Okay. What name was on that order?

24 A. Kling.

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

12107

John Davis - Direct

1 THE COURT: Yes.

2 BY MR. WOODS:

3 Q. Now, this is the form that was attached to the
food, and I

4 take it you go somewhere to pick up the food and the
form

5 within the restaurant; is that correct?

6 A. Yes. We take the order over the phone, fill out
the form,

7 put it into the window by the kitchen. They cook it,
and then

8 it comes out and we pack it up in a bag, staple the
ticket to

9 the bag, and deliver it.

10 Q. Okay. When you say "we take the order over the
phone," did

11 you take this order over the phone, Mr. Davis?

12 A. No, I did not.

13 Q. And when you got to work, is it your testimony this
was

14 ready for you to deliver?

15 A. Correct.

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

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

18 Room 25.

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

20 A. Correct.

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

22 A. That would be the phone number.

23 Q. Do you know what the prefix is there?

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

25 three.

12108

John Davis - Direct

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

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

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

4 A. We also kept a daily log of all orders to keep
track of who

5 delivered the orders. It's numbered so that -- at the
end of

6 the night, when we check out, that's what our
commission is

7 based on.

8 Q. All right. And what type of commission did you get
-- how

9 are you paid for your work there at the Hunam Palace?

10 A. I was receiving 4.50 an hour and 7 percent of
whatever we

11 took out in food. After tax.

12 MR. WOODS: Your Honor, may I approach?

13 THE COURT: Yes.

14 BY MR. WOODS:

15 Q. I'm going to show you what's marked for
identification

16 purposes as 1738, D1738. Do you recognize that item,
sir?

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

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

19 A. Not written on it, no.

20 Q. How -- how do you tell what day it is if you all
don't keep

21 a date on there?

22 A. Our -- the owner of the restaurant at the end of
the night,

23 when we closed up, would take all the tickets from the
orders,

24 wrap them in the log, and then put a rubber band around
it and

25 write the date on the outside.

12109

John Davis - Direct

1 Q. Okay. And this order for Kling at the Dreamland
shows it's

2 Log No. 23?

3 A. Correct.

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

5 A. Yes, there is.

6 Q. And you recognize that entry?

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

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

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

10 your Honor.

11 MR. MACKEY: No objection.

12 THE COURT: D1738 will be received.

13 BY MR. WOODS:

14 Q. What does Item 23 on your log reflect?

15 A. It's an order to the Dreamland Motel that came in
at 5:00

16 for \$9.65.

17 Q. Does it reflect who the delivery person was?

18 A. Yes. It's myself.

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

20 the delivery?

21 A. Correct.

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

23 A. I would guess around 5:45.

24 Q. What route did you have to take from the Hunam
Palace to

25 get there?

12110

John Davis - Direct

1 A. Well, I ran up the street, which is about three
blocks, to

2 the trailer park; left the trailer park, went through
Fort

3 Riley, out to Grandview Plaza, to the Dreamland.

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

5 taken?

6 A. Yeah. There was -- there is a bridge that is
situated that

7 would have blocked access if it had been out, which it
was.

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

9 A. Yes.

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

12 A. Oh, 50 or more.

13 Q. Do you go there -- what frequency is that? Can you
give us

14 an idea of how frequent you go to the Dreamland?

15 A. It would vary from season to season. During the
summer

16 months, they've got a lot of seasonal jobs around; and
that was

17 one of the motels that a lot of the seasonal workers
would stay

18 at. So it would be more frequent during the summer.
One,

19 maybe two a week.
20 Q. Was it your experience that construction workers
stayed at
21 the Dreamland?
22 A. Construction workers, roofing crews.
23 Q. Okay. And you often received orders from those?
24 A. Yes.
25 Q. Were those located on any particular wing of the
motel?

12111

John Davis - Direct

1 A. Yes. It would -- the office is situated in the
center.
2 The building's in an L shape. Most of the long-term
people
3 that were there stayed over to the right of the office.
4 Q. On the east wing?
5 A. Correct.
6 Q. And did you know where Room 25 was when you were
making
7 your delivery?
8 A. Not right offhand, no.
9 Q. When you drove up, what did you see?
10 A. I pulled into the parking lot, and there was a
gentleman
11 standing in the doorway of the first door to the left
of the

12 office.

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

14 25?

15 A. No. The door was already open.

16 Q. Did you look at any other doors to see that you
were on the

17 right side of the motel to find Room 25?

18 A. Yes.

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

20 area?

21 A. Yes, it was.

22 Q. Where did you park?

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

24 Q. Was there another car right in front of the open
door, to

25 your recollection?

12112

John Davis - Direct

1 A. Not that I can recall, no.

2 Q. And what happened after you parked?

3 A. I got out of the car with the bag of food, removed
the

4 ticket from the bag, and approached the gentleman in
the

5 doorway.

6 Q. Did you have a conversation with the gentleman?

7 A. A short one. His food was fairly late at that
point. He

8 asked if I had had a problem getting out there due to
the

9 bridge being out. And I told him that no, I'd just
gotten to

10 work late and we were running a little behind.

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

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

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

14 A. We discussed the fact that it was fairly nice out
that day;

15 it had been rather dreary and rainy the week prior.

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

17 A. Casually. I mean, he wasn't dressed in sweats and
a

18 T-shirt and looking scraggly and bummed out; but he was
just

19 casual dress: jeans, T-shirt type.

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

21 A. No.

22 Q. -- fatigues or anything?

23 A. No, sir.

24 Q. Okay. And where was he standing during this period
that

25 you had a conversation with him?

12113

John Davis - Direct

1 A. He was standing in the doorway.

2 Q. How close did you get to him?

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

4 feet.

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

6 A. 2 to 3 minutes.

7 Q. Did he pay you for the items?

8 A. Yes.

9 Q. And how did he pay you?

10 A. With cash.

11 Q. Where did he obtain the cash from?

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

13 Q. And the order was for 9.65?

14 A. Yes.

15 Q. How much did he give you?

16 A. \$11.

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

18 A. Correct.

19 Q. What did you do at that time? Any further
conversation at

20 all with the individual?

21 A. Not that I can recall, no.

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

23 him?

24 A. No, sir.

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

12114

John Davis - Direct

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

2 A. Yes.

3 Q. So was there any question in your mind that you
were going

4 to the right place?

5 A. No. Not at all.

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

7 A. I assumed that when I pulled up.

8 Q. Did the individual go into the room and shut the
door

9 before you left?

10 A. I don't recall.

11 Q. What did you do after you gave the food to him, got
the

12 money? What did you next do?

13 A. I got back in my car, returned to the restaurant.

14 Q. So your total time with the individual was
approximately

15 how long?

16 A. 2 to 3 minutes.

17 Q. Now, were you contacted by the FBI two days after
the

18 bombing? The bombing occurred on April the 19th.

19 A. Yes.

20 Q. Where were you when you were contacted?

21 A. I was at work at the restaurant.

22 Q. And who was it that contacted you, if you recall?

23 A. I believe it was Gary Burgess from the Junction
City -- or

24 the Geary County Sheriff's Office and an FBI agent.

25 Q. Did you know Mr. Burgess?

12115

John Davis - Direct

1 A. Not personally, no.

2 Q. Did you know who he was, being a local office?

3 A. Yes, a local office.

4 Q. How big is Junction City, by the way?

5 A. Approximately 25,000.

6 Q. Most people know each other?

7 A. Well, there's smaller groupings; but, yeah, I mean
it's a

8 small town.

9 Q. Had you done business at the Dreamland and at the
10 McDonald's and Eldon Elliott's? You know where those
places
11 are?

12 A. Yes.

13 Q. Firestone store?

14 A. Yes.

15 Q. Okay. On Friday, April 21, did -- what happened at
that
16 time when the FBI questioned you? Were the records
available
17 of the delivery?

18 A. I don't know that they were at that time.

19 Q. And were the records available shortly thereafter?

20 A. Yes.

21 Q. Were you able to determine based on the log that's
in front
22 of you and this order form, the Kling order, that you
were the
23 delivery person?

24 A. Correct.

25 Q. Were you able to determine that on Friday when they
first

12116

John Davis - Direct

1 approached you, April 21?

2 A. I believe we went and went through a process of
elimination

3 with the other drivers.

4 Q. How many drivers work there?

5 A. I'm not sure how many are currently employed there.
There

6 were two or three of us at that point.

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

8 A. Yes.

9 Q. How many?

10 A. Two.

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

12 A. No, sir.

13 Q. All right. Did you have a subsequent meeting with
the FBI

14 where they showed you a photo lineup with individuals?

15 A. Yes.

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

17 lineup?

18 A. No, sir.

19 Q. By the time that they showed you the photo lineup
-- which

20 was the following week; is that correct?

21 A. Correct.

22 Q. Do you remember what day it was?

23 A. Not offhand, no.

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

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

12117

John Davis - Direct

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

3 A. I believe so, yes.

4 Q. What did you tell them?

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

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

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

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

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

delivered

17 to.

18 Q. All right. The individual that you saw and talked
with --

19 how long, two to three minutes?

20 A. Correct.

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

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

23 Q. Was it short, in a burr haircut?

24 A. No, it was not.

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

12118

John Davis - Direct

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

2 A. It wasn't styled. It was fairly -- it looked like
he'd

3 been kind of just lounging around in his room. And the
length,

4 2 inches on top, above the collar in back.

5 Q. Style was not a good word to use. How was the
hair? Was

6 it combed, or unkempt, tousled, or what?

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

8 Q. And was that different than what you saw in the
newspaper

9 photo of Mr. McVeigh?

10 A. Yes.

11 Q. What about any facial characteristics of Mr.
McVeigh --

12 excuse me -- of the person that you saw at the room
that night

13 that was different from the photo that you saw of Mr.
McVeigh,

14 just the facial characteristics?

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

16 Q. What was different about the nose?

17 A. Mr. McVeigh has a rather prominent nose, and his
ears stick

18 out from his head, as opposed to laying flat up against
his

19 skull.

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

22 A. His nose was not a prominent feature of his face,
and his

23 ears didn't appear to me to be larger than average.

24 Q. Okay. Anything about his mouth?

25 A. Not specifically.

12119

John Davis - Direct

1 Q. Anything about the width of the face?

2 A. He had a fairly slender face with what a -- what I
would

3 term a severe jaw line, squared off.

I'm 4 Q. Let me clarify the record here. When we say "he,"

5 talking about the person at the room.

6 A. Yes; correct.

face? 7 Q. The person at the room that you saw had a slim

8 A. Yes.

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

10 A. Correct.

11 Q. And he has a slim face?

12 A. Yeah, rather slim.

13 Q. Were they both similar in their slimness?

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

to.

15 Q. Okay.

16 A. I took the face as a whole, and it did not match up

with

17 the pictures I was shown.

18 Q. Okay. And you saw this picture on Sunday, the,

what, 23d

19 of April?

20 A. I would assume so, yes.

21 Q. And you had seen the individual at the room on the

15th,

22 eight days before?

23 A. Yes.

24 Q. So is it accurate to say that your memory was

fairly fresh

25 at that time?

12120

John Davis - Direct

1 A. Yes.

2 Q. Was there anything about that delivery that evening
that

3 stood out in your mind, about going to the Dreamland
and the

4 bridge being out?

5 A. Well, I had had a -- not so much an argument but a
6 discussion with my boss as to which way I needed to go,
because

7 she had been out there previous on the way into town
and said

8 that the bridge was out, and I had been out there the
night

9 before, out to Grandview, and I do not remember it
being out

10 the night before. And the delivery was to the opposite
side of

11 the office from most of our business out there.

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

13 A. Yes.

14 Q. Now, did you tell the agents there when they showed
you the

15 photo lineup that you could not identify the
individuals in

16 there?

17 A. Correct.

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

20 A. I believe I did.

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

23 A. Yes.

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

12121

John Davis - Direct

1 A. A dozen or more.

2 Q. How many?

3 A. A dozen or more.

4 Q. And where have they taken place?

5 A. In various locations. Been out here once to talk
with

6 them. Several meetings in Junction City at my
apartment. I

7 met with them on occasion down at the police
department, also.

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

9 A. Initially -- the initial month following the
delivery and

the first 10 the bombing, probably, oh, once every other day, like

11 week. And then it slowly dropped off.

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

13 A. Yes.

14 Q. All right. When was that?

And also 15 A. The grand jury empaneled down in Oklahoma City.

worked on 16 the -- shortly after ABC ran the composite that I

17 with Miss Boylan.

18 Q. And when was that? Do you recall?

19 A. Not offhand.

here to 20 Q. All right. How many times have you come to Denver

21 meet with the FBI and the prosecutors?

22 A. Once.

23 Q. When was that?

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

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

12122

John Davis - Direct

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

How would 2 Q. Okay. What's been the tenor of those meetings?

3 you characterize the meetings?

4 MR. MACKEY: Objection.

5 THE COURT: Sustained.

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

7 I have no further questions, your Honor.

8 THE COURT: Mr. Mackey.

9 CROSS-EXAMINATION

10 BY MR. MACKEY:

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

12 A. Good morning.

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

14 matter?

15 A. Yes.

16 Q. And before coming to court today, have you reviewed
a

17 transcript of your testimony?

18 A. Yes.

19 Q. Did you study it carefully?

20 A. I looked over it this morning.

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

22 A. Three, maybe four.

23 Q. Mr. Davis, did you find any misstatements on your
part in

24 that transcript?

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

12123

John Davis - Cross

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

2 A. Yes.

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

5 A. Correct.

6 Q. And you've shown the jury an order form from your
business,

7 and the customer's name was Kling; is that right?

8 A. Correct.

9 Q. No first name?

10 A. No.

11 Q. Correct? Kling, Room 25?

12 A. Yes.

13 Q. At the Dreamland Motel; correct?

14 A. Correct.

15 Q. Mr. Davis, you don't quarrel with evidence that
there were

16 two phone calls to the Hunam Palace that same day, do
you?

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

18 Q. Do you remember whether Mrs. Bai or anyone else at
the

19 Hunam urged you, since you arrived a little bit late,
to get on

20 with the job because one customer was already
complaining?

21 A. I don't recall whether or not they'd already called
in and

22 complained or not, no.

23 Q. In any event, you grabbed two bags and you headed
out the

24 door on Saturday, April 15th; correct?

25 A. Correct.

12124

John Davis - Cross

1 Q. You made the short stop first?

2 A. Yes.

3 Q. And then took the long drive through Fort Riley to
Room 25

4 of the Dreamland; correct?

5 A. Yes.

6 Q. At that point in time, Mr. Davis, did you have any
idea who

7 the registered guest was in Room 25?

8 A. No, sir.

9 Q. Have you since April 15, 1995, seen a registration
card for

10 that room?

11 A. No, sir.

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

14 A. I may have.

15 Q. Do you remember that the name of the guest
registered to

16 Room 25 was Tim McVeigh?

17 A. Yes, I believe so.

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

20 A. Correct.

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

22 A. Yes.

23 Q. Mr. Davis, let me hand you at this time what's been
24 admitted into evidence as defendant Exhibit 1709. Do
you see

25 that in front of you?

12125

John Davis - Cross

1 A. Yes.

2 Q. It's been previously identified as a reservation
form at

3 the Elliott's Body Shop bearing the signature of Robert
D.

4 Kling. Do you see that signature?

5 A. Yes, sir.

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

8 A. Yes.

9 Q. It's been also agreed, Mr. Davis, that it was Tim
McVeigh
10 who signed the name "Robert Kling" on that form. All
right.

11 With that representation, Mr. Davis, let me ask you:
When you
12 delivered the bag to your customer in Room 25 on
Saturday, did
13 you ask him to sign anything?

14 A. No, I did not.

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

19 A. No.

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

21 A. Yes.

22 Q. In fact, you were -- you made some 15 more
deliveries that

23 same night; correct?

24 A. Correct.

made 25 Q. And over the years at the Dreamland Motel, you have

12126

John Davis - Cross

1 literally hundreds and hundreds and hundreds of
deliveries;

2 correct?

3 A. Not to the Dreamland, no.

4 Q. I'm sorry?

5 A. Not hundreds.

6 Q. Around Junction City?

7 A. Yes.

8 Q. And there's something common about those
deliveries, is

9 there not, Mr. Davis? They're momentary; correct?

10 A. Correct.

11 Q. Very short duration?

12 A. Most of the time, yes.

13 Q. And virtually all of the customers are different?

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

and so 15 Q. Because so much of your business goes to Fort Riley

many 16 much at Fort Riley turns over its staff, you don't see

17 same faces time after time, do you?

18 A. No, not often.

19 Q. And it is your testimony that this particular
person inside
20 of Room 25 on Saturday was a person you had never seen
before
21 and have never seen since?
22 A. Correct.
23 Q. Well, let's turn our attention now, Mr. Davis, to
Friday,
24 April 21, two days after the bombing in Oklahoma City.
25 A. Right.

12127

John Davis - Cross

1 Q. And about six days after this delivery to Room 25.
2 A. Yes.
3 Q. Are we focused?
4 A. Sure.
5 Q. You show up at work on Friday evening, do you not?
6 A. Yes.
7 Q. And shortly after arriving, there's a couple of
police
8 officers, FBI agents, and local officials who are
asking
9 questions of the delivery men at the Hunam; correct?
10 A. Correct.
11 Q. And they go about their business, and they
eventually get
12 to you because they're looking to find who it was that

made the

13 delivery to the Dreamland Motel on Saturday; correct?

14 A. Correct.

15 Q. Now, at the start of that interview, Mr. Davis, you

of a 16 understood they were there as part of an investigation

17 massive bombing that had taken place two days before in

18 Oklahoma City?

19 A. Yes.

to ask 20 Q. You understood that's what they were there to do,

correct? 21 questions that might help in that investigation;

22 A. Correct.

that 23 Q. There was nothing about that interview, Mr. Davis,

fashion from 24 would prohibit or inhibit or restrain you in any

you 25 cooperating fully with law enforcement when they asked

12128

John Davis - Cross

1 about what you knew of that delivery; correct?

2 A. Correct.

given the 3 Q. You, of course, would want to cooperate fully,

correct? 4 nature of the crime and the assignment they had;

5 A. Yes.

6 Q. Now, before you started talking to the police
officers that

7 the

8 somehow

7 afternoon, Mr. Davis, had you seen any news accounts in
8 Junction City paper about individuals in Junction City
9 connected to the bombing?

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

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

13 that, please.

14 that's a

15 Junction

14 And can you tell from the cover page that
15 portion of the newspaper, from the Daily Union in
16 City, for this same day, Friday, April 21, 1995?

17 A. Yes.

18 Q. Could you flip through it just a moment.

19 A. Sure.

20 MR. WOODS: Thank you.

21 BY MR. MACKEY:

22 two

23 article on

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

25 A. Yes.

12129

John Davis - Cross

you had
to the

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

sure I

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

you
the

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

9 A. I couldn't say.

time

10 Q. But this was, was it not, Mr. Davis, the very first

replay in as
and

11 that anybody had asked you to freeze your mind and
12 much detail as possible what you had seen and observed

13 could recall from this delivery; correct?

14 A. Correct.

information

15 Q. And the officers made clear that any and all

from

16 you might have and could remember, they wanted to learn

17 you?
18 A. Correct.
19 Q. Asked open-ended questions: Tell us everything,
all
20 details that you possibly can remember about that
delivery;
21 correct?
22 A. Yes.
23 Q. And at that time, of course, they asked you: Did
you make
24 the delivery? And you told them yes?
25 A. Correct.

12130

John Davis - Cross

1 Q. And then they said, Mr. Davis, describe the
customer that
2 you handed the bag to; correct?
3 A. Correct.
4 Q. And at that time, Mr. Davis, knowing the import of
this
5 interview, you told them it was definitely a white
male?
6 A. Correct.
7 Q. It was not Hispanic?
8 A. Correct.
9 Q. It was not any other race. It was definitely a
white male;

10 correct?
11 A. Yes.
12 Q. You told them that this individual was 28 to 29
years of
13 age; correct?
14 A. Late 20s, early 30s, yes.
15 Q. 28 or 29 years of age?
16 A. Yeah.
17 Q. Were you that specific on --
18 A. I don't know if I was that specific or not.
19 Q. Mr. Davis, take a -- open the book, please; and you
should
20 find a tab for an interview marked April 21, 1995. Do
you see
21 that?
22 A. Yes.
23 Q. In the first page of the interview. Look down to
the
24 next-to-last paragraph in that same interview. You see
that?
25 A. Yes.

12131

John Davis - Cross

1 Q. All right. Take a moment and just read it to
yourself,
2 please.
3 Have you read it?

4 A. Yes.

5 Q. Having read it, Mr. Davis, do you recall telling
the police

6 officers on that evening that this individual, this
customer,

7 was 28 or 29 years of age?

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

9 says.

10 Q. Do you have any reason, Mr. Davis, to doubt the
content or

11 the accuracy of this descriptive information written up
by the

12 officers that evening?

13 A. No.

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

16 A. Yes.

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

18 A. Correct.

19 Q. You described his hair as short and sandy?

20 A. Yes.

21 Q. And that he had a clean-cut manner?

22 A. Yes.

23 Q. Clean-cut look?

24 A. Yes.

25 Q. And you were certain that he had no mustache?

12132

John Davis - Cross

1 A. Correct.

2 Q. And that was everything that you could provide in
the way

3 of details to those officers six days after the
delivery and

4 two days after the bombing; correct?

5 A. Correct.

6 Q. You did not at that time, Mr. Davis, begin to
describe size

7 of ears; correct?

8 A. No.

9 Q. Shape of a nose?

10 A. No.

11 Q. Color of the eyes?

12 A. No.

13 Q. The facial features in any form or fashion;
correct?

14 A. Correct.

15 Q. Because at that time you couldn't recall any; isn't
that

16 true?

17 A. Correct.

18 Q. You have in fact consistently admitted, Mr. Davis,
that

19 what stuck out in your mind about this customer were

three

20 things: his height --

21 A. Yes.

22 Q. -- his weight, and his build?

23 A. Yes.

24 Q. And you have felt secure in your memory that he was

25 slightly taller than you; correct?

12133

John Davis - Cross

1 A. Correct.

2 Q. You have felt secure in your memory that he was
around 180?

3 A. Yes.

4 Q. And you have felt secure in your memory that this
was a man

5 of slender build?

6 A. Yes.

7 Q. And then in every other respect about physical
8 characteristic, Mr. Davis, the scale drops off, does it
not?

9 A. Yes.

10 Q. And when it comes to the face, Mr. Davis, on that
day and

11 any other day, you have, do you not, very little
specific

12 recall of the customer's facial features?

13 A. Correct.

14 Q. On that same day, at the Hunam Palace, the police
officers

15 showed you two diagrams, did they not?

16 A. Yes.

17 Q. Two composites.

18 And I'll show you at this time what's been
admitted as

19 Government -- excuse me -- Defendant's 1731.

20 MR. MACKEY: I can use the ELM0, your Honor.

21 THE COURT: All right.

22 BY MR. MACKEY:

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

24 sketch?

25 A. Yes.

12134

John Davis - Cross

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

2 A. Yes.

3 Q. You looked at what's on that piece of paper and
compared it

4 to your memory of the person you had encountered in
Room 25,

5 did you not?

6 A. Correct.

accurate 7 Q. You knew how important it was to be precise and

8 about your statements, did you not?

9 A. Yes.

this 10 Q. And at that time you told the police officers, "If

somebody I 11 person had a slightly thinner face, it might be

12 know; but I don't know where from." Correct?

13 A. Correct.

14 Q. They showed you, did they not, Mr. Davis, what I'm

15 displaying as Defendant's 1699?

16 A. Yes, they did.

questions 17 Q. Correct? Same first time you'd been asked any

18 about this delivery; correct?

19 A. Yes.

did you 20 Q. And in similar fashion, you studied this carefully,

21 not?

22 A. Yes.

officers 23 Q. Knew how important it was that the law enforcement

this 24 get as much accurate information as possible as part of

25 investigation; correct?

John Davis – Cross

1 A. Correct.

customer
2 Q. You studied it, compared it to your memory of this

nobody I
3 you had seen, and you told the police officers, "It's

4 know."

5 A. Correct.

that "I
6 Q. Then you went on to say, did you not, Mr. Davis,

7 make so many deliveries, I cannot recall faces"?

8 A. Yes, I assume I did.

when
9 Q. Do you have any doubt that you made that statement

customer
10 first asked about the identity and description of your

11 when shown this composite?

12 A. Without opening this again, no.

Friday
13 Q. Mr. Davis, after the police officers left that

was that
14 evening, could you tell the members of the jury who it

on
15 you first spoke to about what you had seen and observed

16 Saturday, April 15, in your delivery?

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

18 the restaurant?

19 Q. Yes.

20 A. It would have been a media contact, and I can't

even recall

21 right now who it was.

22 Q. Could have been somebody from the Washington Post?

23 A. Yes. That was who it was.

24 Q. And would you tell the members of the jury when you
first

25 spoke to any representative of the Washington Post?

12136

John Davis - Cross

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

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

3 Government Exhibit 2128.

4 MR. WOODS: Thank you.

5 BY MR. MACKEY:

6 Q. You can tell from reviewing that exhibit, can you
not,

7 Mr. Davis, that that's a Washington Post article that
appeared

8 on April 24 -- Monday, April 24, 1995; correct?

9 A. Correct.

10 Q. And page through it, as I see you doing, to the
end, and

11 see if you can't find a quote that you gave to the
Washington

12 Post that was published on Monday, April 24.

13 A. Yes.

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

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

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

20 Sunday, you spoke --

21 A. Correct.

22 Q. Who called who?

23 A. They called me.

24 Q. And how did they have your name?

25 A. I really don't know.

12137

John Davis - Cross

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

3 A. Yes.

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

6 A. Correct.

7 Q. And at that time, Mr. Davis, in a statement to a
newspaper

8 reporter, you said, "It wasn't Tim McVeigh"?

9 A. Correct.

10 Q. On Friday, you told the law enforcement officers,
"I don't

11 recall faces." And by the weekend, it's your
testimony,

12 Mr. Davis, you had ruled out Tim McVeigh as that
customer?

13 A. Yes.

14 Q. Mr. Davis, what happened in the weekend, April 22
and 23,

15 that would move you from no recall to absolute
certainty that

16 it was not Tim McVeigh?

17 A. Thought. Going back over events my head.

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

19 A. Yes.

20 Q. You wouldn't make an offhand comment to a newspaper
21 reporter without having checked your mind and your
memory about

22 the details; correct?

23 A. Correct.

24 Q. Had you ever met Tim McVeigh before?

25 A. No, sir.

John Davis – Cross

sure by
him?

1 Q. Well, how was it, Mr. Davis, that you could be so
2 the weekend that the customer you delivered to was not

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

something, do
the man

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

8 A. Correct.

was it

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

11 A. From shoulders up.

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

13 A. Correct.

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

15 A. No.

build

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

18 A. Correct.

portrait

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

21 A. Correct.
22 Q. Nothing in that portrait shot of Tim McVeigh would
tell you
23 how tall he was?
24 A. Correct.
25 Q. Nothing in that shot would tell you how much he
weighed?

12139

John Davis – Cross

1 A. Correct.
2 Q. And nothing in that small portrait snapshot of Tim
McVeigh
3 would tell you, would it, anything about his build?
4 A. No.
5 Q. And yet on that basis and that basis only, Mr.
Davis, you
6 then made the statement to the Washington Post
reporter: It
7 ain't Tim McVeigh.
8 A. Correct.
9 Q. And the day after, the day after this Washington
Post
10 article appeared, the FBI came back to seek your
assistance,
11 did they not?
12 A. Yes, I believe so.
13 Q. You were a man who had delivered a product to Room
25, same

14 room in which the person named Tim McVeigh was
registered, and

15 they wanted to ask you some more questions; correct?

16 A. Correct.

17 Q. They wanted to test your memory of this encounter
with this

18 person against several photographs of different
individuals;

19 correct?

20 A. Correct.

21 Q. And they told you, Mr. Davis: We want you to look
at this

22 photographic spread; you may or may not see the person
who you

23 delivered the bag in this spread. Correct?

24 A. Correct.

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

12140

John Davis - Cross

1 the newspaper, rely only on your memory, draw it up in
your

2 mind, compare it with what's on that photo spread;
correct?

3 A. Correct.

4 Q. Gave you clear instructions to study the
photographic

5 spread and select, if you could, the person that you

had

6 delivered the bag to, correct?

7 A. Correct.

8 Q. Mr. Davis, when they showed you the photographic
spread,

9 you had already taken a public position, had you not,
that it

10 was not Tim McVeigh?

11 A. Yes.

12 Q. You expected, did you not, that Mr. McVeigh's
photograph

13 may well be among the several that were being shown to
you on

14 that day; correct?

15 A. Yes.

16 Q. And you knew before you began to look at those
photographs

17 that you were not going to select Tim McVeigh; isn't
that true?

18 A. Maybe so. But it is also my recollection that I
did look

19 at those photographs.

20 Q. And you studied them?

21 A. Yes.

22 Q. But before you began looking at them, you had
already ruled

23 out Tim McVeigh as your customer, had you not?

24 A. Yes.

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

12141

John Davis - Cross

and the 1 anybody that you remember this meeting with the agents
plans to 2 photographic spread because they had interrupted your
your 3 meet another reporter who wanted to talk to you about
4 story?

5 A. Yes.

6 Q. Who was that reporter?

7 A. I don't recall offhand.

reporters 8 Q. Do you remember, Mr. Davis, how many different
delivery? 9 you've spoken to since the time that you made this

10 A. A dozen or more.

11 Q. Washington Post, we've already talked about.

12 A. Right.

13 Q. Dallas Morning News for sure?

14 A. Correct.

15 Q. Kansas City Star?

16 A. Sure.

stations; 17 Q. And a number of correspondents for television

18 correct?

19 A. Correct.

20 Q. One of those meetings with a television
correspondent took

21 place on the anniversary, the first anniversary, Mr.
Davis, of

22 the Oklahoma City bombing. Do you recall?

23 A. Yes.

24 Q. You recall there was a flood of publicity around
the

25 anniversary, news stories about the bombing?

12142

John Davis - Cross

1 A. Yes.

2 Q. The developments in the investigation, progress of
the

3 case; correct?

4 A. Correct.

5 Q. And you were invited to be interviewed; correct?

6 A. Correct.

7 Q. But they didn't want to just hear your story, did
they,

8 Mr. Davis? They wanted you to sit down with a
composite

9 artist; correct?

10 A. Correct.

11 Q. And recall all the details about this person, so
much so

up; 12 that a composite, a facial composite, could be drawn
13 correct?
14 A. Correct.
15 Q. And you did that? You cooperated with them?
16 A. Yes.
you 17 Q. At any point in time before then, Mr. Davis, had
18 volunteered or told the FBI: I have now enough
information in
19 my mind about this person's facial features, I can
help, I can
20 sit down and work with your composite artist and come
up with a
21 sketch?
22 A. No.
23 Q. But when the television station called, you agreed,
did you
24 not, to meet with them?
25 A. Yes.

12143

John Davis - Cross

1 Q. You left Junction City; correct?
2 A. Yes.
3 Q. Drove up all the way to Topeka?
4 A. Yes.
5 Q. And did you spend a weekend with those people?

6 A. No, I did not.

7 Q. How much time did you spend with the composite
artists?

8 A. About four hours in the afternoon, and then we went
to

9 Topeka; and I was back at work by 11 that evening.

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

11 A. Correct.

12 Q. And you took your time going through your memory,
did you

13 not, with Miss Boylan about the details of this
customer's

14 face?

15 A. Yes.

16 Q. And spent many hours, as you described, coming up
with your

17 best description of the person, facial representation
of the

18 person, you had delivered that bag to; correct?

19 A. Correct.

20 Q. Let me show you Government Exhibit 1629.

21 Do you see that, Mr. Davis?

22 A. Yes.

23 Q. And is that composite the result of your meeting
with

24 Jeanne Boylan on or about the anniversary of the
bombing?

25 A. Yes, it is.

12144

John Davis – Cross

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

2 Exhibit 1629.

3 MR. WOODS: No objection, your Honor.

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

5 wish.

6 MR. MACKEY: Thank you.

7 BY MR. MACKEY:

8 Q. Mr. Davis, this composite is the result of your
work with

9 Jeanne Boylan; is that correct?

10 A. Correct.

11 Q. Is that your testimony?

12 At any point in time, Mr. Davis, have you
taken a good

13 close look at your composite, Government Exhibit 1629,
and

14 compared it to the Un. Sub. 1 composite that was shown
to you

15 by the police officers on Friday, April 21?

16 A. I don't think I consciously have sat down with both
of them

17 in front of me, no.

18 Q. Would you do that now.

is 19 Mr. Davis, would you agree with me that there
Un. Sub. 20 virtually no similarity between your composite and the
21 1 composite?
22 A. No.
23 Q. They are quite different, are they not?
24 A. Yes.
you 25 Q. Mr. Davis, I have just a couple final questions, if

12145

John Davis - Cross

1 don't mind.
2 You told the officers on Friday, April 21,
that one 3 thing you were sure of is that there was one man and
one man 4 only in Room 25; is that correct?
5 A. Correct.
6 Q. Have you ever, Mr. Davis, said to anybody that
there was 7 more than one person in that room?
8 A. No, sir.
9 Q. Mr. Davis, take a look at this dark-haired woman
back here 10 at the second table. Have you ever met her before?
11 A. Not to my knowledge, no.

12 occasion that

Q. Do you remember in September of 1996, on an

13 Hotel?

Mr. Woods asked you about, staying at the Burnsley

14 A. Yes.

15 the

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

16 Burnsley Hotel?

17 A. Yes.

18 the

Q. Did you in that visit to Denver, Mr. Davis, tell

19 bartender you saw two people in Room 25?

20 A. No, sir, I did not.

21 Q. You deny that?

22 A. Yes, I do.

23 made the

Q. Do you deny in equal fashion, Mr. Davis, having

24 you spent

statement to Jeanne Boylan, the composite artist that

25 in

several hours with, in April of 1996, that Tim McVeigh,

12146

John Davis – Cross

1 addition to your composite person, was in Room 25?

2 A. Yes, I emphatically deny that.

3 MR. MACKEY: Thanks, Mr. Davis.

4 THE COURT: Mr. Woods.

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

6 REDIRECT EXAMINATION

7 BY MR. WOODS:

8 Q. Mr. Davis, follow-up on the question: I'm not
quite sure

9 what he was asking. The dark-haired lady: Was that
the

10 bartender at the Burnsley?

11 A. No. I do not believe so.

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

13 BY MR. WOODS:

14 Q. I'm not sure what the connection was. But you've
never met

15 this lady, have you?

16 A. Not that I can recall, no.

17 Q. She's not met you?

18 A. Not that I'm aware of.

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

20 A. No.

21 Q. Okay. Mr. Mackey asked you did you try to help the

22 officers. Do you recall those questions?

23 A. Yes.

24 Q. And on Tuesday, you know -- you were interviewed on
Friday,

25 April 21. Then on Tuesday, the 25th, when they showed
you the

John Davis - Redirect

1 photo lineup? Do you recall that date?

2 A. Yes.

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

4 officers when you told them that, "Look, my
recollection is

5 it's different than what the picture of McVeigh is in
the

6 paper"?

7 A. Yes.

8 Q. Have your interviews with the Government from that
date

9 been sort of the tenor that you've just went through
with

10 Mr. Mackey?

11 MR. MACKEY: Objection.

12 THE COURT: Overruled.

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

14 BY MR. WOODS:

15 Q. Has the Government -- have you met with these
agents here

16 at the table, Mr. Hersley and Mr. Tongate?

17 A. Yes.

18 Q. How many occasions?

19 A. Several occasions.

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

21 A. Yes.
22 Q. Have they discussed your duty as a witness?
23 A. Yes.
24 Q. Have you been encouraged to change your testimony?
25 MR. MACKEY: Objection.

12148

John Davis - Redirect

1 THE COURT: Overruled.
2 THE WITNESS: Not overtly, no.
3 BY MR. WOODS:
4 Q. What do you mean by "not overtly"?
5 A. The process of giving an oral description of the
person I
6 delivered the food to, the number of times that that
has been
7 gone back over, rapidly in succession, and to still be
asked
8 that same question consistently when my answer remains
9 consistent to me feels like the response they receive
is not
10 the one they would like and that we'll go over this
again and
11 again and again.
12 Q. Okay. How many times have you gone over it with
them?
13 A. I can't put a number on it.
14 Q. Pardon me?

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

16 Q. Is it over 20?

17 A. I'm sure.

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

20 A. No.

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

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

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

12149

John Davis - Redirect

1 enforcement authorities giving details of the case?

2 A. I may, or may have.

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

5 MR. MACKEY: Objection.

6 THE COURT: Sustained.

7 BY MR. WOODS:

8 Q. Did you initiate any contact with the press?

9 A. No, sir.

10 Q. Did the -- contact with the press happen shortly
after your

11 interview with the Government agents?

12 A. Yes.

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

14 A. Correct.

15 Q. Okay. When Miss Boylan did that sketch, did you
advise her

16 that that was inaccurate in any way?

17 A. I did not see the final sketch.

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

19 What sketch did you see before it became
final?

20 A. We had roughed in some of the facial features. She
had not

21 completed the final shading.

22 Q. Did you ever indicate to her that it was as dark as
is

23 portrayed in that sketch?

24 A. No.

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

12150

John Davis - Redirect

1 particular shading?

herself 2 A. I don't believe that -- I don't know whether it was

3 or the producer that was working on that. My
understanding was

4 that the final composite would be darker several shades
so that

5 after it went through several generations of copying,
it would

6 lighten up and still look the way it needed to.

7 Q. Did you ever describe the individual as that dark
as is

8 portrayed in that sketch?

9 A. No.

10 Q. Is it accurate as to the darkness?

11 A. No.

12 Q. As to the length of hair, is it accurate?

13 A. Fairly accurate. I never got out a ruler and
measured --

14 Q. Sure.

15 A. -- the person's hair.

16 Q. Was -- the individual that you met at that room
that night,

17 did he have a burr haircut?

18 A. No, sir.

19 Q. When you deal with a individual and you give the
food and

20 get the money, do you look at the individual in the
face?

21 A. Usually, yes.

could
as Tim

22 Q. Okay. And did you tell the officers as soon as you
23 that your recollection is this is not the same person
24 McVeigh?
25 A. Yes.

12151

John Davis – Redirect

you

1 Q. Did you think that you were trying to help them?
2 A. Yes.
3 Q. Did you get the feeling that after that point that
4 haven't helped them?
5 MR. MACKEY: Objection.
6 THE COURT: Sustained.
7 MR. WOODS: Okay. Thank you, Mr. Davis. No
further
8 questions.
9 MR. MACKEY: Just a couple follow-up
questions.
10 THE COURT: All right.
11 RECROSS-EXAMINATION
12 BY MR. MACKEY:
13 Q. Mr. Davis, you have been asked to go over this
transaction
14 a number of times, have you not?
15 A. Yes.

16 Q. And I heard you tell the jury that you can't quite
17 understand that because you have been consistent from
the
18 beginning about your recall.

19 A. Yes.

20 Q. Is that what you told the jury? Is there anything
21 consistent, Mr. Davis, about first telling the police
officers

22 "I can't recall faces" and later coming up with your
composite
23 drawing?

24 A. Initial answer would be no.

25 Q. Just one final question, Mr. Davis. You looked at
this

12152

John Davis - Recross

1 order form for delivery to Room 25, have you not?

2 A. Yes.

3 Q. And it is for one order and one order only;
correct?

4 A. Correct.

5 Q. One customer and one customer only?

6 A. I would assume so, yes.

7 Q. Room 25 at the Dreamland?

8 A. Yes.

9 MR. MACKEY: That's all.

10 MR. WOODS: Thank you. He may be excused.
11 THE COURT: Are you excusing -- all right.
12 Agreed?
13 MR. MACKEY: Yes.
14 THE COURT: You may step down, Mr. Davis.
You're
15 excused.
16 Members of the jury, we'll take our recess.
We went
17 longer than we sometimes do, but sometimes, you know,
we try to
18 take these recesses sort of according to the flow of
the
19 testimony.
20 So now we'll break for 20 minutes as has been
our
21 custom, and of course please continue to follow the
cautions
22 given about recesses: Avoiding discussion of the case
among
23 yourselves and others, keeping open minds and waiting
till
24 you've heard it all before you -- as you know that you
must,
25 before you talk about it with other jurors. And of
course you

at any 1 must not talk about it with anyone who is not a juror
2 time.

3 You're excused now for 20 minutes.

4 (Jury out at 10:46 a.m.)

5 THE COURT: All right. We'll be in recess.

6 (Recess at 10:47 a.m.)

7 (Reconvened at 11:05 a.m.)

8 THE COURT: Be seated, please.

9 (Jury in at 11:06 a.m.)

10 THE COURT: All right. Next witness.

11 MR. TIGAR: Yes. We're calling Mr. Richard
Reyna,

12 your Honor. He is in the court with the consent of the
13 Government.

14 THE COURT: All right. If you'll come forward
and be
15 sworn, please.

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

18 (Richard Reyna affirmed.)

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

20 Would you state your full name for the record
and
21 spell your last name.

22 THE WITNESS: Richard Reyna, R-E-Y-N-A.

23 THE COURT: Mr. Tigar.

24 DIRECT EXAMINATION

25 BY MR. TIGAR:

12154

Richard Reyna - Direct

1 Q. Mr. Reyna, what kind of work do you do, sir?

2 A. Private investigator, sir.

3 Q. How long have you been in that business?

4 A. I went from a police officer to a private
investigator, so

5 it's been since 1973.

6 Q. And before 1973, you were a police officer?

7 A. No, sir. I started as a police officer in 1973.

8 Q. I see.

9 A. And I -- in 1985, I began to do this sort of
business.

10 Q. Now, in 1995, sir, were you doing some
investigations

11 connected with the Oklahoma City bombing case?

12 A. Yes, sir, I was.

13 Q. And in the course of doing that, did you meet Mr.
Roger

14 Moore?

15 A. Yes, I did.

16 Q. Tell the jury when you met Mr. Moore.

17 A. If I may refer to my report?

18 MR. TIGAR: Yes.

19 Your Honor --

20 BY MR. TIGAR:

21 Q. Do you need that to refresh your recollection?

22 A. Just on the date, sir.

23 Q. Go ahead.

24 A. September 30 of '95.

25 Q. Where did you meet him, sir?

12155

Richard Reyna - Direct

1 A. I met Mr. Moore at the Sands Hotel and Casino in
Las Vegas,

2 Nevada.

3 Q. Did you have more than one meeting with him, or
just one?

4 A. I had two.

5 Q. Will you tell the jury, please, the dates of those
two

6 meetings.

7 A. The first meeting was September 30, 1995. The
second

8 meeting was October 1, 1995.

9 Q. And did he discuss the events that he said had
happened to

10 him on the 5th of November, 1994?

11 A. Yes, he did.

12 Q. Did he say anything about what -- whether he would
or could

13 hurt Timothy McVeigh?

14 A. He said it both ways. He said he would not hurt
Tim

15 McVeigh and he could not hurt Tim McVeigh.

16 Q. Did he say anything about whose guns were stolen?

17 A. He said that only his weapons were stolen.

18 Q. Did he express surprise at that?

19 A. He was surprised that the other weapons were not
touched.

20 Q. And did he say anything about weapons that he had
had in

21 his house and a search warrant? Did he say anything on
that

22 subject?

23 A. He mentioned that it's a good thing that a search
warrant

24 had not been executed in his home a few days before
because he

25 had more weapons than the people that -- the Davidian
people.

12156

Richard Reyna - Direct

1 Q. Now, did he express -- what did he say was the day
on which

2 he was referring to when he said they were glad -- he
was glad

3 that the FBI had not executed a search warrant?

4 A. Okay.

5 Q. If you need to refresh your recollection, sir, it's
at the
6 next-to-last page, the last full paragraph.

7 A. He just said that he was glad that the FBI did not
execute
8 a search warrant at his place on the day after the
bombing in
9 Oklahoma City because at the time he had more weapons
in his
10 home than were found at the Davidian compound in Waco,
Texas.

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

12 THE COURT: Any, Ms. Wilkinson?

13 MS. WILKINSON: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MS. WILKINSON:

16 Q. Good morning, Mr. Reyna.

17 A. Good morning.

18 Q. We just met during the break, didn't we?

19 A. Yes, ma'am.

20 Q. You were kind enough to speak to me before you took
the
21 stand?

22 A. Yes, ma'am.

23 Q. Thank you. You were hired or assigned by the court
as an

24 investigator for Mr. McVeigh; isn't that right?

25 A. Yes, ma'am.

12157

Richard Reyna – Cross

out and 1 Q. And as an investigator, part of your job was to go
2 interview witnesses?

3 A. That's correct.

figure 4 Q. And when you did that, I assume you were trying to
occurred? 5 out what they had really said and what had really

6 A. That is correct.

7 Q. Trying to find out the truth?

8 A. Yes, ma'am.

9 Q. And when you questioned these witnesses, including
statements? 10 Mr. Moore, you went over the details of their prior

11 A. That's correct.

12 Q. Went over the events?

13 A. Yes, ma'am.

November 5, 14 Q. With Mr. Moore, you talked about the robbery on
15 1994?

16 A. Yes, I did.

17 Q. And you asked him the details of that robbery?

18 A. Yes, ma'am.

19 Q. And he told you those details, did he not?

20 A. Yes, he did.

21 Q. He told you that the robber had a ski mask on,
didn't he?

22 A. Yes, he did.

23 Q. He told you the robber had a shotgun?

24 A. Yes.

25 Q. And he told you that he was duct-taped across the
eyes?

12158

Richard Reyna – Cross

1 A. He was duct-taped.

2 Q. Told you he couldn't identify the robber?

3 A. He could not identify him.

4 Q. Didn't he tell you that he was sure it was not
Timothy

5 McVeigh?

6 A. Yes.

7 Q. Now, after your interviews with Mr. Moore, you
wrote up a

8 report?

9 A. That's correct.

10 Q. That's your practice, is it not?

11 A. Yes, ma'am.

12 Q. And you write up a summary of what the witness told

you;

13 correct?

14 A. Yes, ma'am.

15 Q. Provide that to the attorneys to assist them?

16 A. Yes, ma'am.

the

17 Q. And when you do that, you try and include all of

18 relevant information, don't you?

19 A. Yes, ma'am.

what

20 Q. And sometimes you use your own words to describe

21 happened -- to summarize?

22 A. To summarize, yes. Sometimes.

said

23 Q. And sometimes you use quotes to say what the person

24 exactly?

25 A. That's correct.

12159

Richard Reyna - Cross

report and

1 Q. And we can distinguish that by reviewing your

2 see where you put quotes and where you did not?

3 A. That's correct.

the

4 Q. But you do try and include all the information that

5 witness told you; correct?

6 A. That's correct, yes.

7 Q. And did you try and do that when you wrote up your
8 interview of Mr. Moore?

9 A. Yes, I did.

10 Q. Could you look at your report -- or can you recall
before
11 you look at your report whether you ever wrote anywhere
in this
12 report that Mr. Moore told you that the robber had a
ski mask
13 on?

14 Do you need to look at your report?

15 A. I probably -- I do.

16 Q. Go ahead.

17 A. I remember that there was a mention . . .

18 I did not include that in there.

19 Q. In fact, you didn't include most of the details of
the
20 robbery in this report, did you?

21 A. I didn't. I just -- I went over with Mr. Moore
what he had

22 told the police.

23 Q. And it was consistent with what you had read in
other
24 reports. Is that correct?

25 A. Yes, ma'am.

Richard Reyna - Cross

your
1 Q. So you decided not to include any of that detail in
2 report?

3 A. That is correct.

of
4 Q. So this is not a complete summary of your interview
5 Mr. Moore, is it?

6 A. Obviously it is not.

report, did
7 Q. And you selected certain things to put in this
8 you not?

that
9 A. That is correct. And sometimes there are things
10 sometimes one forgets.

robbery in
11 Q. You didn't put any of the real details of the
12 here, did you?

what he
13 A. No, because I had attached the police reports as to
14 told the police.

15 Q. Do you mention that attachment in your report?

16 A. No, I do not.

the
17 Q. So if I just have the report, I wouldn't know about
18 attachment. Is that right?

They
19 A. Well, the attachment was given to me by the office.
20 already knew about it, so --

main 21 Q. But you didn't incorporate that attachment in your

22 report?

23 A. No, ma'am, I did not.

24 Q. Now, you've told us that when you put some of the
summarize 25 information in this report, you use your own words to

12161

Richard Reyna - Cross

1 what Mr. Moore told you; correct?

2 A. Yes.

not 3 Q. And when you talked about whether he could or would

did 4 hurt Mr. McVeigh, you didn't use quotes on those words,

5 you?

6 A. No, I did not.

Moore 7 Q. And was it your understanding from speaking to Mr.

could not 8 that he was trying -- that he was telling you that he

identify the 9 hurt Mr. McVeigh because he didn't -- he couldn't

10 robber?

11 A. That's what I felt at the time, yes.

12 Q. That's what you understood from him?

13 A. Yes, ma'am.

14 Q. And he made it clear to you that he could not --
that he
15 was sure Mr. McVeigh was not the robber?
16 A. He was sure that he was not the robber.
17 Q. He also made it clear to you, did he not, that he
believed
18 Mr. McVeigh was involved with the robbery?
19 A. He thought -- he suspected it.
20 Q. And you included that in your report, did you not?
21 A. Yes.
22 Q. Now, you also mentioned in your report, did you
not, about
23 this search warrant and the comments about the guns
being in
24 his home?
25 A. That's correct.

12162

Richard Reyna - Cross

1 Q. You didn't use quotations when you put that in your
report,
2 did you?
3 A. Understand, please, sometimes when I use
quotations,
4 it's -- I want to get it to the attention of that --
the
5 reader. It's something that I think is really
interesting. On

put a
person
one
down as

6 the other hand, sometimes I fail to do that and I can't
7 verbatim word for word as to what this -- and how this
8 told me. It was very difficult. We were going from
9 subject to another, so I was trying to write everything
10 best as I could.

11 Q. But you can't say it's a verbatim rendition of his
12 statements, can you?

me.
13 A. It is not verbatim. It's generally what he told

told
14 Q. And again, we focus on the quotes as things that he
15 you that you remember he told you directly; right?

16 A. Yes.

17 Q. Now, did you take notes when you were interviewing
18 Mr. Moore?

19 A. Yes, I did.

20 Q. Did you bring your notes to court?

gladly
I've
21 A. I told you that -- I have no objections. I'll
22 search for them and send them. I'll give you whatever
23 got.

far;
24 Q. They haven't been provided to the Government thus
25 correct?

12163

Richard Reyna – Cross

1 A. No, ma'am.

2 Q. Mr. Reyna, just one more question: When you
reviewed the

3 Moore's

police reports of the robbery and you listened to Mr.

4 recall?

statements, were there any inaccuracies that you

5 A. No.

6 MS. WILKINSON: No further questions.

7 THE COURT: Mr. Tigar?

8 REDIRECT EXAMINATION

9 BY MR. TIGAR:

10 under which

Q. Mr. Reyna, are you aware of the discovery rules

11 items are provided to the Government?

12 A. Yes, sir.

13 whether or not

Q. Okay. And do you know of your own knowledge

14 typewritten reports or only -- or agent field notes are
15 supposed to be provided? Do you know one way or
another in

16 this case?

17 A. Typewritten reports. That's what we've always been
18 receiving.

19 things

Q. Now, did Mr. -- Government counsel asked you about

20 that Mr. Moore said. Do you remember him saying
anything about

21 insurance?

22 A. Yes. He said that he didn't have insurance to
cover the

23 loss.

24 Q. Did he say anything about the effect of the robbery
on him?

25 A. If I could refer back to my report, please.

12164

Richard Reyna - Redirect

1 Q. Yes. Next-to-last page, the second full paragraph
from the

2 bottom.

3 MS. WILKINSON: Your Honor, if we could just
make it

4 clear whether he's reading from the report, or
refreshing his

5 recollection.

6 BY MR. TIGAR:

7 Q. Yes. Are you refreshing your recollection?

8 A. I'm going to refresh my recollection. I won't read
from

9 the report.

10 Q. With your recollection thus refreshed, can you tell
us?

11 A. I haven't found it yet. Sorry, sir.

12 Q. Second paragraph from the bottom.

13 A. All right.

14 And your question again, please.

15 Q. Yes. Did he say anything about the effect of the robbery
16 on him?

17 A. Well, he just said that it ruined him or would ruin him.

18 Q. Now, so that we're clear here, when is the first time that
19 you and I spoke about your coming to testify here today?

20 A. Last night.

21 Q. And when did you get here?

22 A. This morning.

23 Q. You were asked questions about quotes that -- from

24 Mr. Moore. Is that correct, sir?

25 A. Yes, sir.

12165

Richard Reyna - Redirect

1 Q. Now, would you look, please, at the second-to-last page at
2 about the middle where it says, "Mr. Moore commented."
3 see that?

4 A. Yes, sir.

5 Q. Do you see the quote marks there?

6 A. Yes, sir.

7 Q. And is that what he said to you that you put in
quotes
8 there?

9 A. That is exactly what he said to me.

10 Q. Will you read it, please.

11 A. "The prosecution better not count on me for very
much,
12 because I will not have very much to say because I
don't know
13 anything. I cannot even identify who it was that
robbed me."

14 Q. And did he -- did Mr. Moore say how many people it
was that
15 robbed him?

16 A. Mr. Moore suggested it could have been two people.

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

18 THE COURT: Ms. Wilkinson?

19 MS. WILKINSON: Yes, your Honor.

20 RE-CROSS-EXAMINATION

21 BY MS. WILKINSON:

22 Q. Mr. Reyna, Mr. Moore has been consistent with you
that he
23 could never identify who the robber is; is that right?

24 A. Yes, ma'am.

25 Q. And when he told you that the robbery had ruined
him, did

Richard Reyna – Recross

1 he say that it financially ruined him?

2 A. I would think financially. That's the way I took
it.

3 Q. Well, do you recall what you wrote in your report
about

4 comparing his life to Jennifer McVeigh's life?

5 A. Well --

6 Q. How did he say it in that context, Mr. Reyna?

7 A. Like it ruined him personally, his life.

8 Q. What was your understanding of that comment?
Wasn't it --

9 didn't you tell me that your understanding was that it
was

10 being associated with this case and the publicity?

11 MR. TIGAR: Object to "didn't you tell me,"
your

12 Honor.

13 THE COURT: Sustained.

14 BY MS. WILKINSON:

15 Q. Mr. Reyna, haven't you said in the past that your
16 understanding of his statement was that he was
concerned about

17 being associated with this case and the publicity
surrounding

18 this case?

19 A. That's the way I interpreted it.

20 Q. That's how you described how he was ruined?

21 A. Yes, ma'am.

you
22 Q. Now, you told Mr. Tigar that Mr. Moore suggested to
23 that two people could have been involved?

24 A. Yes, ma'am.

one
25 Q. Did he tell you that he only saw one robber -- saw

12167

Richard Reyna - Recross

1 robber?

one
2 A. He didn't see anyone. He just felt that there was

3 because one person did all the talking.

4 Q. Well, he saw the person in the ski mask, didn't he?

5 A. Well, initially, yes.

6 Q. So he did see one person?

7 A. Yes, ma'am.

person refer
8 Q. And didn't he tell you that he heard the first

9 to a second person?

10 A. No, he didn't.

person?
11 Q. Did he say that he could have heard a second

just
12 A. He didn't tell me that he could have heard. He

13 suspected that there was someone else.

14 Q. But he told you that he had never seen a second
person;

15 isn't that right?

16 A. That's correct.

17 MS. WILKINSON: No further questions.

18 MR. TIGAR: I'm sorry to make it -- but it is
-- just

19 what was raised in that.

20 REDIRECT EXAMINATION

21 BY MR. TIGAR:

22 Q. Mr. Reyna, would you look, please, at the second
page of

23 your report, the third paragraph. Do you see a
reference there

24 to "life being wrecked"?

25 A. Yes, sir.

12168

Richard Reyna - Redirect

1 Q. And that's the one -- that's the reference that
includes

2 the reference to Jennifer McVeigh; correct?

3 A. Yes, sir.

4 Q. Okay. Now, did the subject of the effect of this
on his

5 life come up again a second time?

6 A. No. He just mentioned -- the second time mentioned

the

7 loss of the weapons.

8 Q. Okay. And would you look at the next-to-last page,
sir,

9 the second paragraph from the bottom.

10 A. Okay.

11 Q. Now, you see "Mr. Moore stated," etc., there.
Using that,

12 does that refresh your recollection as to whether or
not the

13 subject of the effect of the robbery on him came up a
second

14 time?

15 MS. WILKINSON: Objection, your Honor. The
witness

16 didn't say he didn't recall. He said it didn't occur.

17 THE COURT: Overruled.

18 THE WITNESS: Again, please.

19 BY MR. TIGAR:

20 Q. Did the subject of the effect of the robbery on him
come up

21 a second time in your conversation with him?

22 A. Yes, sir.

23 Q. And was that on a different day from the first
time?

24 A. Yes, sir.

25 Q. Okay. And the -- on the second day, tell the jury
what did

12169

Richard Reyna – Redirect

1 he say the effect of the robbery on him was?

going
2 MS. WILKINSON: Objection, your Honor, if he's

3 to read from the report.

4 THE COURT: According to your recollection.

5 BY MR. TIGAR:

6 Q. According to your recollection.

have any
7 A. According to my recollection, he said he didn't
8 insurance and this would ruin him.

9 MR. TIGAR: No further questions. Thank you,
10 Mr. Reyna.

11 MS. WILKINSON: He can be excused, your Honor.

12 MR. TIGAR: He may be excused.

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

14 Next witness.

15 MR. WOODS: Yes, your Honor. Mary Martinez.

16 Mr. Thurschwell will question.

17 THE COURT: All right.

18 MR. NEUREITER: Dale Carlson.

order.
19 MR. WOODS: I'm sorry. We had a change of

20 It's Dale Carlson.

21 THE COURT: Dale Carlson?

22 MR. WOODS: And Mr. Neureiter will question.
23 THE COURTROOM DEPUTY: Raise your right hand,
please.
24 (Dale Carlson affirmed.)
25 THE COURTROOM DEPUTY: Would you have a seat,
please.

12170

and 1 Would you state your full name for the record
2 spell your last name.

3 THE WITNESS: Dale Carlson, C-A-R-L-S-O-N.

4 DIRECT EXAMINATION

5 BY MR. NEUREITER:

6 Q. Mr. Carlson, you and I have never met, have we?

7 A. Pardon me?

8 Q. You and I have never met, have we?

9 A. No.

10 Q. My name is Reid Neureiter, and I've been appointed
to help 11 out Terry Nichols.

12 Where are you from, Mr. Carlson?

13 A. Herington.

14 Q. Is that Herington, Kansas?

15 A. Yes, ma'am -- yes, sir.

16 Q. How old are you?

17 A. 71.

18 Q. What do you do for a living?

19 A. Oil field.

20 Q. Are you retired now?

21 A. Yes.

Herbel? 22 Q. Do you know a gentleman by the name of Harry

23 A. Yes.

24 Q. How do you know Mr. Herbel?

just 25 A. When I retired from the oil field, I worked for him

12171

Dale Carlson - Direct

1 part-time.

2 Q. What kind of a business is Mr. Herbel in?

3 A. Surplus.

4 Q. And where does he have that business?

5 A. In Herington.

there in 6 Q. Can you tell us what kind of facilities he has

7 Herington to do his surplus business?

8 A. He's got two facilities.

9 Q. What are they called?

10 A. Surplus City and Surplus Outlet.

11 Q. What are the locations of those two -- those two
12 businesses?

13 A. One of them is on 11th Street -- or -- I don't know
for
14 sure. I think one is on 5th Street and another one is
on
15 Trapp, I think it is.

16 Q. On Trapp Street?

17 A. Yes.

18 Q. And do you work for him on occasion?

19 A. Yes.

20 Q. And tell us about how you work for Mr. Herbel.

21 A. Well, I -- when I retired, why, he couldn't get
anybody to
22 work in his carpet deal, so he said he wanted me to go
there
23 for a couple months. And I stayed there too long. My
wife got
24 sick and got cancer, and so she died in November, '9 --
let's
25 see. A year ago. I took care of her for eight months
before

12172

Dale Carlson - Direct

1 that, so I had to quit Herbel.

2 Q. In April of 1995, were you helping out Mr. Herbel
in his
3 business?

4 A. Yes.

5 Q. Was there a particular one of those two businesses,
the
6 Surplus City, the Surplus warehouse that you would work
at?

7 A. I worked in carpet. Carpet and ice boxes and stuff
like
8 that.

9 Q. And which location did you work at: the one on
Trapp
10 Street, or the other one?

11 A. I worked on the one on 5th Street.

12 Q. On 5th Street?

13 A. And at noon, why, then, I relieved up there when he
went to
14 eat.

15 Q. Is the 5th Street one the warehouse, or is that the
Surplus
16 City?

17 A. Call it the warehouse.

18 Q. Call it the warehouse. Have you ever met Mr.
Nichols
19 before?

20 A. Yes.

21 Q. Around what time period did you meet Mr. Nichols?

22 A. Oh, I don't know. He come in about -- I suppose
three days
23 before the bombing.

24 Q. Two or three days before the bombing?

25 A. Yes.

12173

Dale Carlson – Direct

1 Q. Can you tell us about that interaction.

2 A. Yeah. He come in and asked if we wanted to trade
-- he

3 wanted seven square of shingles, and he wanted to trade
army

4 shovels and mattocks and picks.

5 Q. He wanted some shingles? I didn't --

6 A. Seven squares of shingles.

7 Q. Seven squares of shingles. And what was it that he
wanted

8 to trade?

9 A. He wanted to trade mattocks and shovels and picks,
and they

10 were army surplus.

11 Q. For those of us who aren't in the mining area, is a
mattock

12 almost like a pick but a little different? It has a
long

13 handle?

14 A. I never did see what he had, but --

15 Q. He came in and he asked to do that?

16 A. Yes.

17 Q. Now, would you have had the authority to go ahead
and

18 approve that kind of a trade?

19 A. No.

20 Q. Who had that authority?

21 A. Harry. He was home eating dinner.

22 Q. That was Harry Herbel?

23 A. Yeah.

24 Q. Had he had some kind of medical difficulty that
kept him
25 home that day?

12174

Dale Carlson - Direct

1 A. He had surgery on his leg.

2 Q. So what did you do after Mr. Nichols --

3 A. I called him.

4 Q. -- came in?

5 A. I called him and told him what he wanted and handed
him the
6 phone.

7 Q. You used "him" a couple times there.

8 A. Harry.

9 Q. Did you call Mr. Herbel?

10 A. Yeah, I called Harry.

11 Q. And you called him at his home?

12 A. Yes.

13 Q. Did you tell Mr. Herbel what was up?

14 A. Yes.

15 Q. What did you tell Mr. Herbel?

16 A. I just told him that he wanted to trade mattocks
and stuff

17 for seven square of shingles and handed him the phone,
and he

18 talked to him.

19 Q. Did you overhear some of that conversation?

20 A. No, I didn't.

21 Q. All right. I'm going to show you what has been
marked as

22 Defense Exhibit 1759 and ask you if that's a fair and
accurate

23 representation of the overhead of Herington, Kansas.

24 A. Here's Trapp.

25 Q. Don't describe what's on it. Just say -- does that
look

12175

Dale Carlson - Direct

1 like Herington to you?

2 A. Oh, yeah.

3 Q. And do you recognize this down here as being what
it says

4 it is?

5 A. Yeah, uh-huh.

6 Q. And this business right here?

7 A. Yeah, uh-huh.

8 Q. And since the incident in Oklahoma City, have you
become
9 familiar with where Mr. Nichols' house is?

10 A. I know where it is.

11 Q. Does that accurately indicate where his house is?

12 A. Uh-huh.

13 MR. NEUREITER: Your Honor, we move the
admission of

14 Defense Exhibit D1759.

15 MR. ORENSTEIN: May I take a look, your Honor?

16 THE COURT: Yes, surely.

17 MR. ORENSTEIN: May I ask one question on voir
dire?

18 THE COURT: Yes.

19 VOIR DIRE EXAMINATION

20 BY MR. ORENSTEIN:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. You were asked if you later found out where Mr.
Nichols'
24 home was?

25 A. Yeah.

12176

Dale Carlson - Voir Dire

1 Q. Was that told to you by someone else?

2 A. Well, I just seen everybody down there, so . . .

3 MR. ORENSTEIN: No objection, your Honor.

4 THE COURT: All right. D1759 is received, may
be
5 used.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. NEUREITER:

8 Q. And those shingles: Do you remember which of the
two
9 facilities those shingles would have been at?

10 A. They'd have been on 5th Street.

11 MR. NEUREITER: On 5th Street.

12 If I may approach, your Honor.

13 THE COURT: Yes.

14 BY MR. NEUREITER:

15 Q. Is that the --

16 A. Yeah.

17 Q. Which facility is that?

18 A. That's the one downtown -- in town, isn't it?

19 That might be -- yeah, that's it.

20 Q. Is that where the shingles would have been?

21 A. Yeah.

22 MR. NEUREITER: Your Honor, move to publish.

23 THE COURT: Yes.

24 BY MR. NEUREITER:

here, 25 Q. Mr. Herbel (sic), where it says Surplus City on

12177

Dale Carlson - Direct

1 that's where the shingles would have been?

2 A. Yes.

3 MR. NEUREITER: No further questions.

4 THE COURT: All right. Mr. Orenstein.

5 MR. ORENSTEIN: May I have a moment?

6 CROSS-EXAMINATION

7 BY MR. ORENSTEIN:

8 Q. Good afternoon. I'm sorry. Good morning again,
sir.

9 A. Good morning.

10 Q. My name is Jamie Orenstein.

11 Sir, the transaction that you had with Mr.
Nichols:

12 That occurred on April 17, two days before the bombing?

13 A. Something like that. Two or three. I don't
remember

14 exactly.

15 Q. Did you previously say it was April 17?

16 A. No.

17 Q. Okay. And that was the one and only time,
whichever day

18 that was -- that was the one and only time that you saw

19 Mr. Nichols in your store?

20 A. Yes.

21 Q. So you can't account for his whereabouts any other
time?

22 A. (Witness shakes head.)

23 MR. ORENSTEIN: Thank you, your Honor.
Nothing

24 further.

25 THE COURT: The witness excused?

12178

Dale Carlson - Cross

1 MR. NEUREITER: Actually, your Honor, I wanted
to

2 clarify.

3 THE COURT: All right.

4 REDIRECT EXAMINATION

5 BY MR. NEUREITER:

6 Q. Around what time do you recall Mr. Nichols coming
in?

7 A. Around noon hour.

8 Q. Right around the noon hour?

9 A. Probably 12:30.

10 Q. Do you remember talking with the FBI about this
encounter

11 on a previous occasion? They came by and they talked
to you?

12 A. (Witness nods head.)

13 precise date

Q. Would it refresh your recollection as to the

14 wrote up of

that it occurred if I showed you a report that they

15 when they talked to you?

16 A. No, I wouldn't remember.

17 sheet of

Q. You wouldn't remember? Even if I showed you a

18 paper --

19 A. No.

20 Q. -- where they had --

21 THE COURT: He says he wouldn't remember.

22 MR. NEUREITER: Yes, your Honor.

23 so many

THE WITNESS: I wouldn't remember. They had

24 questions.

people and papers and everybody around asking

25 BY MR. NEUREITER:

12179

Dale Carlson - Redirect

three days

1 Q. To the best of your recollection, it was two or

2 before the bombing?

3 A. Yeah.

4 came in?

Q. To your recollection, was it Easter Sunday that he

5 A. No, it wouldn't have been Easter Sunday.

6 Q. It was a workday?

7 A. It might have been before that. I don't remember
for sure.

8 MR. NEUREITER: Thank you very much, sir.

9 THE WITNESS: Okay.

10 MR. NEUREITER: Appreciate you coming out.

11 THE COURT: Excused?

12 MR. ORENSTEIN: Agreed.

13 THE COURT: You may step down, Mr. Carlson.
You're

14 excused.

15 Next.

16 MR. WOODS: Mr. Herbel. Harry Herbel.

17 THE COURTROOM DEPUTY: Would you raise your
right

18 hand, please.

19 (Harry Herbel affirmed.)

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

21 Would you state your full name for the record
and

22 spell your last name.

23 THE WITNESS: Harry J. Herbel, H-E-R-B-E-L.

24 THE COURTROOM DEPUTY: Thank you.

25 DIRECT EXAMINATION

Harry Herbel - Direct

1 BY MR. NEUREITER:

2 Q. Hello, Mr. Herbel.

3 A. Yes.

4 Q. If you could just lean into the microphone and
speak up a

5 little louder.

6 A. Okay. Thank you.

7 Q. Mr. Herbel, where are you from?

8 A. Herington, Kansas.

9 Q. How old are you?

10 A. 69.

11 Q. And what do you do for business?

12 A. I'm in the surplus business.

13 Q. And what are the facilities that you have there in
the

14 surplus business in Herington?

15 A. Well, I have a Surplus Outlet and then a Surplus
City.

16 Q. Have you ever met Mr. Terry Nichols?

17 A. No, I haven't.

18 Q. Did there come a time -- excuse me. Do you know a
Mr. Dale

19 Carlson?

20 A. Yes.

21 Q. How do you know him?

22 A. He works for me.

23 Q. Does he work at those two facilities you've just
described?

24 A. Well, he don't right now. I mean, he's retired and
pretty

25 wealthy man, so . . .

12181

Harry Herbel - Direct

1 Q. Doesn't need to.

2 A. No.

3 Q. In April of 1995, did Mr. Carlson help you out at
your

4 surplus stores?

5 A. Yes.

6 Q. Around April, 1995, did you get a phone call from

7 Mr. Carlson?

8 A. That's right.

9 Q. Can you tell us a little bit about that phone call.

10 A. Well, he said that he had --

11 MR. ORENSTEIN: Your Honor --

12 THE COURT: Just a moment, please.

13 MR. ORENSTEIN: I'll object to hearsay that's
part of

14 the description.

15 THE COURT: Well, you're asking him not for
the truth

16 of the matter but for what was said?

17 MR. NEUREITER: For what was said, your Honor.

18 THE COURT: All right.

19 THE WITNESS: Okay. He said there is a man
here that

20 is getting in the surplus business and he wanted to
speak to

21 me. And to the best of my knowledge, he spoke to me
and he

22 wanted to at that time trade some shovels and picks for
some

23 shingles, about seven squares.

24 BY MR. NEUREITER:

25 Q. Now, you used the word "he" all through that
description,

12182

Harry Herbel - Direct

1 and I think you might have meant it in two different
ways.

2 Mr. Carlson talked to you first. Correct?

3 A. Right.

4 Q. And he said -- what did Mr. Carlson say?

5 MR. ORENSTEIN: I object to this coming in for
the

6 truth.

7 MR. NEUREITER: It's not offered for the
truth.

8 THE COURT: All right.

9 BY MR. NEUREITER:

10 Q. What did Mr. Carlson say?

11 A. He said that there was a man that wanted to talk to
me that
12 was going into the surplus business or in the surplus
business
13 and wanted to do some swapping.

14 Q. And then did a different voice come on the line?

15 A. Yes.

16 Q. Tell me what your conversation was with that
person.

17 A. Well, I don't know -- can't remember quite exactly,
but I
18 do remember that he wanted to trade some shovels and
picks for
19 some shingles; and naturally, I'm interested in
trading.

20 That's what I do.

21 Q. That is a common practice in the surplus business?

22 A. Yes.

23 Q. Tell us about that, bartering in the surplus
business.

24 A. Well, you ever -- trading is something that's
pretty

25 important because we always get a hold of something
that's hard

12183

Harry Herbel - Direct

1 to move, but we trade it to somebody else that's got
the same
2 thing they can't move; and then it sometimes winds up
to be a
3 very good deal for both of us.

4 Q. And did the gentleman you spoke with tell you where
he had
5 gotten all these picks and shovels?

6 A. No, he didn't. He just had said that he was going
-- or
7 Carlson said that he was going into the surplus
business or was

8 in the surplus business, and I didn't question it. And
that's
9 what the words were.

10 Q. And did -- what did you tell him about whether you
were
11 going to -- going to do the trade?

12 A. I said that I was laid up at the time but I would
be down
13 there in a few days and we would visit on it.

14 Q. And I'm going to show you an exhibit that has been
15 previously entered into evidence as Defense Exhibit
1759, ask

16 you if you recognize that as an overhead picture of
Herington,
17 Kansas?

18 A. I'm familiar with the streets and stuff, but I -- I
19 think -- yeah, that's the Surplus City, yes.

20 Q. That's the Surplus City?

21 A. Yes.
22 Q. Is that your business there?
23 A. Yes.
24 Q. I'm sorry?
25 A. It was at that time.

12184

Harry Herbel - Direct

would have
1 Q. It was at that time. It was where the shingles
2 been kept?
3 A. That's right.
4 Q. Had the voice said that he would go down and look
at the
5 shingles on a certain occasion?
6 A. Well, I presumed he'd probably looked at them and
was
7 wanting to do some swapping.
8 Q. Did there come a time after the bombing when you
were back
9 at work and the FBI came to the store?
10 A. You say -- will you repeat that?
11 Q. Sure. It was two parts. You were laid up with
your
12 problem.
13 A. Yes.
14 Q. But did you go back to work in the next -- over the
course

15 of that week? Do you recall?

16 A. Well, I just slipped out and in.

17 Q. Out and in.

18 A. Uh-huh.

19 Q. Did there come a time when you were at this
location, the

20 Surplus City location, and some FBI agents came in?

21 A. No. I was not there then.

22 Q. You were not there on that occasion?

23 A. No.

24 MR. NEUREITER: Okay. No further questions,
your

25 Honor.

12185

Harry Herbel - Direct

1 THE COURT: Any cross-examination?

2 MR. ORENSTEIN: Very briefly, your Honor.

3 THE COURT: All right.

4 CROSS-EXAMINATION

5 BY MR. ORENSTEIN:

6 Q. Good afternoon, Mr. Herbel. My name is Jamie
Orenstein.

7 When you got this phone call, did you tell the
man to

8 come back to the store the next day to continue
discussing the

9 trade?

10 A. I presume that I told him that I would be down in
the next

11 few days and we could visit on it.

12 Q. But you never saw him again?

13 A. No.

14 Q. So you don't know where he was?

15 A. No.

16 MR. ORENSTEIN: No further questions. Thank
you, sir.

17 THE WITNESS: Thank you.

18 MR. NEUREITER: Witness is excused.

19 And we appreciate your coming out, Mr. Herbel.

20 THE COURT: All right. You can go home, Mr.
Herbel.

21 THE WITNESS: Thank you very much.

22 THE COURT: You're excused.

23 Next, please.

24 MR. WOODS: Yes, your Honor. Mary Martinez.

25 THE COURTROOM DEPUTY: Would you raise your
right

12186

1 hand, please.

2 (Mary Martinez affirmed.)

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

6 THE WITNESS: Mary Louise C. Martinez,
7 M-A-R-T-I-N-E-Z.

8 THE COURTROOM DEPUTY: Thank you.

9 DIRECT EXAMINATION

10 BY MR. THURSCHELL:

11 Q. Good morning, Mrs. Martinez.

12 A. Good morning.

13 Q. Mrs. Martinez, where do you live?

14 A. I live in Junction City, Kansas.

15 Q. And are you married?

16 A. Yes.

17 Q. Do you have children?

18 A. Four.

19 Q. Sons, daughters?

20 A. One son, three daughters.

21 Q. Where do you work?

22 A. I work at Geary Community Hospital in the OB
Department.

23 Q. What is your position?

24 A. I'm a registered nurse.

25 Q. So you help with deliveries?

12187

Mary Martinez - Direct

1 A. Yes.

2 Q. How long have you worked there?

3 A. About 15 years.

4 Q. Mrs. Martinez, I'm going to show you what's been
entered in

5 evidence as Government's Exhibit 318 and ask -- it
should

6 appear before you on your screen.

7 A. Yes.

8 Q. Let me ask if you have ever seen this individual in
person.

9 A. Yes.

10 Q. Do you recall the date that you saw that
individual?

11 A. August 17, 1995.

12 Q. Now, if I suggested that it might be April 17 --

13 A. I'm sorry. April 17.

14 Q. April 17?

15 A. Yes.

16 Q. And what time of day did you see him?

17 A. About 8:20, 8:25 in the morning.

18 Q. And where did you see him?

19 A. At the corner of Chesnut and Washington.

20 Q. And in what city would that be?

21 A. In Junction City, Kansas.
22 Q. I'm going to show you what's been entered in
evidence as
23 Defense Exhibit 1697.
24 Let me zoom out first.
25 Do you recognize this as Junction City,
Kansas, a map

12188

Mary Martinez – Direct

1 of Junction City, Kansas?
2 A. Yes.
3 Q. Zooming in, can you identify for the jury where the
4 intersection of Washington Street and Chesnut Streets
are on
5 that map? And to do so, please take the pen that's in
front of
6 you and you can write on the screen underneath --
7 A. The red one.
8 Q. Not that one. There should be one connected to a
wire.
9 A. This one?
10 THE COURT: No.
11 THE WITNESS: I'm sorry. Here it is. I've
got it.
12 BY MR. THURSCHELL:
13 Q. If you could, just holding it upright, could you
point to

Street 14 that circle and circle the intersection of Washington
15 and Chesnut Street.

16 I'm sorry. You have to reach under it.

17 A. Just push this? Okay.

18 THE COURTROOM DEPUTY: Angle it up. There we
go.

19 THE WITNESS: Right there.

20 BY MR. THURSCHELL:

21 Q. Thank you. How did you come to be at that
intersection

22 that morning, Mrs. Martinez?

23 A. I got off work, and then I went to leave my kids at
school;

24 and then I was going to go talk to my daughter.

25 Q. Let me stop you there. Can you see on this map --
well,

12189

Mary Martinez - Direct

1 where was your daughter at the time?

2 A. She was at work, at Tri-Star Cable.

3 Q. Can you identify on this map where Tri-Star Cable
is

4 located?

5 A. Okay. Right about there. Right there.

6 Q. All right. Did you, in fact, visit your daughter
that

7 morning?

8 A. No, I didn't.

9 Q. Why not?

10 A. There was too many cars in the front, so I figured
they'd

11 be busy.

12 Q. Okay. Did you -- where did you go from your
daughter's

13 place of work?

14 A. I turned back around and -- and went back up
Washington.

15 Q. Okay. Could you trace again on the screen the
route that

16 you took?

17 A. Oh. Right there. I just went back up this way.

18 Q. Okay. Now, I take it you were driving?

19 A. Yes.

20 Q. And what kind of vehicle were you driving?

21 A. Windstar.

22 Q. And what class of vehicle is that? Is that a
compact?

23 A. Minivan.

24 Q. Minivan?

25 A. Uh-huh.

12190

Mary Martinez - Direct

1 Q. Were you alone?

2 A. Yes.

3 Q. All right. Now, how many lanes on Washington
Street where

4 it meets Chesnut Street?

5 A. It's a one-lane both ways; but at that
intersection, it

6 gives a little -- a little opening there where they
could stop.

7 And where I'm at, they could still go around me and
make a

8 right turn.

9 Q. So there is an extra space on the right at the
intersection

10 to make a right turn, but otherwise it's a two-lane
going in

11 one way in both directions?

12 A. Right. But the intersection on his side, there is
a little

13 opening there where they get to turn to the left.

14 Q. Now, when you say "him," I assume you're speaking
about the

15 individual who you identified earlier?

16 A. Uh-huh.

17 Q. Have you come to learn that that's Timothy McVeigh?

18 A. Yes.

19 Q. All right. Now, can you describe for the jury
where you

20 were at the intersection and where he was?

21 A. I was close to the line here that separates, you

know, the

22 highway in the middle, and I was close to there; and I
was past
23 the pedestrian -- I always go a little bit over. And I
24 stopped, and he was a little bit over, too, on his
side. He
25 was going to make a -- going toward Wal-Mart in front
of me.

12191

Mary Martinez - Direct

1 Q. Was he in a vehicle, also?

2 A. Uh-huh. He was in a Ryder truck. Big, big Ryder
truck.

3 Q. Now, you were facing north on Washington Street?

4 A. I don't understand by "north," but yes. I was
facing that
5 way.

6 Q. Continuing in the same direction that you were
proceeding
7 earlier?

8 A. Yeah. I know the west and the east, but I don't
know the
9 north.

10 Q. Was he directly across the street facing you in the
other
11 lane?

12 A. Yeah. He was right there in front of me. He was
going to

13 make a turn going that way.

14 Q. And he was -- was he the first car in line there?

15 A. Uh-huh, yeah. The sunlight was right on him.

16 Q. What caused you both to stop at that point?

17 A. The light.

18 Q. Red light?

19 A. Yeah.

20 Q. How wide -- how many lanes is Chesnut Street at
that
21 intersection?

22 A. It's also a two-lane.

23 Q. Now, how was the light -- not the traffic light but
the
24 sunlight that morning?

25 A. Real bright.

12192

Mary Martinez - Direct

1 Q. Bright? All right. Could you see directly into
the cab --

2 A. Oh, yeah.

3 Q. -- of the truck? And about how long did you have
to see

4 into the cab of the truck while you were both standing
there at

5 the light?

6 A. I think we both came up on it right at red, you
know; and

7 then the other people were going around him, going
straight.

8 So it was about half a minute, a minute. I don't know.

9 Q. Was Mr. --

10 A. Not even that long.

11 Q. Was Mr. McVeigh alone in the truck?

12 A. No. He had somebody else with him.

13 Q. Can you describe -- I'm sorry. Who was driving?

14 A. Mr. McVeigh.

15 Q. And was the other individual in the passenger's
seat?

16 A. Uh-huh.

17 Q. Can you describe that other individual?

18 A. He had a white T-shirt and black-leather motorcycle
jacket

19 on, and he had some blue jeans on.

20 Q. Could you get -- did you get a sense of his age?

21 A. It's been quite a while.

22 Q. If you remember.

23 A. I don't remember that well.

24 Q. Okay. Let me ask you: Did you get a good look at
this

25 individual at the time?

12193

Mary Martinez - Direct

1 A. At the time, yes, I did get a real good look at
him.

2 Q. Do you recall his build, body build?

3 A. Medium-built.

4 Q. Medium-built?

5 A. Medium-built.

6 Q. Do you recall his height, if you could tell?

7 A. Well, you know, the height of the cab. He got up
and moved

8 to another area of the cab, a little bit further up
this way,

9 so he could stand the length of the cab.

10 Q. Okay.

11 A. And he didn't hit his head or anything. He didn't
bend

12 over or anything, so --

13 Q. So you thought that he was not very tall?

14 A. Not that tall.

15 Q. Could you tell his ethnic background?

16 A. I thought he was Hispanic.

17 Q. All right. And what made you notice that?

18 A. I guess -- I really don't remember very well, but I
19 remember from, you know, the -- that he was -- I don't
know. I

20 just -- I can't say that I remember now but that he was

21 light -- a little -- his complexion was a little bit
more brown

22 than, you know, like a suntan or something.

23 Q. When you say you really can't remember now, do you
have any
24 recollection?
25 A. Not of the face.

12194

Mary Martinez - Direct

1 Q. Okay. Not of the face itself. Has your
recollection been
2 refreshed in the past by looking at reports of
interviews that
3 were done closer to the time?
4 A. What do you mean? A composite or something?
5 Q. No. Has your recollection -- would it refresh your
6 recollection to look at an interview, report of an
interview
7 that was done closer to the time that you saw this
individual?
8 A. Oh, you mean by reading those sheets of paper?
9 Q. Yes, indeed. That's what I'm talking about.
10 A. No, not really.
11 Q. Okay. Was there a particular reason that -- that
you
12 recall at the time that you paid attention to the
individual's
13 ethnic background?
14 A. Excuse me. What?
15 Q. Was there a particular reason at the time that you
were

16 looking at him that you paid attention, special
attention, to
17 the individual's ethnic background?
18 A. Oh. Because I thought he was here, you know -- I
mean
19 looking at him, I thought he might have been an illegal
alien
20 from -- coming from -- from Mexico or something, and I
was just
21 concerned that he would be out in the open so much that
they
22 would be able to see him, the authorities.
23 Q. As you sit there today, do you remember having that
24 concern?
25 A. Yes.

12195

Mary Martinez - Direct

1 Q. And is there some particular reason why that
concern would
2 come to mind to you?
3 A. Well, I guess because of my nationality and of
knowing that
4 they're here, you know, to help their families and --
5 Q. What is your nationality?
6 A. Spanish, Mexican.
7 Q. Now, eventually, the light turned green.
8 A. Uh-huh.

9 Q. What did you do?

10 A. I started to -- I looked at him one more time, at
the man,

11 the second man. Then I started to -- then I looked
back at the

12 light and I said, "It's got to be green by now." So I
did, and

13 it was green; so I started to go.

14 Q. Did you go straight through the intersection?

15 A. Uh-huh. I went straight through, and he stayed --
they

16 stayed standing there.

17 Q. Was that because the light was red for them?

18 A. Uh-huh. Still red.

19 Q. And did you notice Mr. McVeigh have a reaction as
you drove

20 by?

21 A. Yeah. Because I looked at the man -- the second
man. Then

22 I looked at the light and I started to go, and then I
looked

23 back to look at the second man again; and as I started
to pass

24 him, I noticed as -- by the corner of my eye that Mr.
McVeigh

25 was looking at me all the way past his shoulder with
his beady

Mary Martinez – Direct

1 eyes, and it scared me. It scared me. And nobody had
ever
2 looked at me like that.

3 Q. So this incident made an impression on you?

4 A. Yes. I went home and told my husband, and he told
me not
5 to be so nosey.

6 Q. All right. Did you eventually see a picture of Mr.
McVeigh
7 on television?

8 A. Yes. The day of the bombing when they -- when they
got him
9 in Oklahoma and they got him and put him in a van and I
--

10 that's when I told my husband, "That's the man that was
looking
11 at me real bad."

12 Q. And was that your spontaneous reaction --

13 A. Uh-huh.

14 Q. -- upon seeing him?

15 A. And I said, "I saw him."

16 Q. Did you report this incident to law enforcement?

17 A. Yeah. It took about a month, month and a half,
something
18 like that.

19 Q. You didn't do it right away?

20 A. Well, no. Everybody else was saying that they saw
him; and

21 in Junction City, everybody was coming out, the
newspaper and
22 the news -- the local news was coming out with a bunch
of them
23 saying they saw him here, saw him there.
24 Q. But you eventually reported it to law enforcement?
25 A. Yes, I did.

12197

Mary Martinez - Direct

1 MR. THURSCHELL: Nothing further, your Honor.

2 THE COURT: Mr. Ryan?

3 CROSS-EXAMINATION

4 BY MR. RYAN:

5 Q. Good morning, Ms. Martinez.

6 A. Good morning.

7 Q. My name is Pat Ryan. I'm the United States
Attorney in

8 Oklahoma City.

9 A. Okay.

10 Q. We've not met, have we?

11 A. No, we haven't.

12 Q. I have a few questions for you.

13 A. Okay.

14 Q. You were asked on direct examination about the
first time
15 that you contacted law enforcement.

16 A. Uh-huh.

17 Q. Do you recall that?

18 A. I was asked what?

19 Q. Do you recall when you first contacted law
enforcement?

20 A. I don't recall exactly what day, but yeah, I
remember.

21 Q. It was Tom Clark; right?

22 A. Yes. Yes, I did talk to Tom Clark.

23 Q. And you saw him at a ballerina class or dancing
class that

24 you --

25 THE COURT: Wait a minute. We can't have two
people

12198

Mary Martinez - Cross

1 talking at once.

2 THE WITNESS: I'm sorry.

3 THE COURT: Listen to the question, and then
you

4 answer.

5 THE WITNESS: All right.

6 BY MR. RYAN:

7 Q. Do you recall that evening several months after the
bombing

8 you saw Mr. Clark and his daughter? They were there at
a dance

class. 9 class, and you and your daughter were there at a dance

10 Is that correct?

11 A. Yes, sir.

McVeigh 12 Q. And you told Mr. Clark that you thought that Mr.

13 looked like a fellow that worked over at the Wakefield

14 Retirement Center. Do you remember that?

told 15 A. Not that Mr. McVeigh -- that the other man. What I

had 16 him was that a patient was at the hospital and that she

-- the 17 said that the second man was working, according to his

was 18 picture that they came out with -- that the second man

her if 19 working at a nursing home out at Wakefield; and I asked

20 she had talked to the authorities about it.

that you're 21 Q. The second man being the one in the Ryder truck

22 talking about?

23 A. Yes.

24 Q. He worked over in the Wakefield retirement home?

25 A. That is what the patient told me.

12199

Mary Martinez - Cross

1 Q. And that is what you told Mr. Clark?

2 A. And I asked the patient if she had told
authorities, and

3 she said no.

4 So I saw Mr. Clark. I mentioned it to him.

5 Q. When was the first time that you told the FBI agent
6 anything about seeing someone who looked like Mr.
McVeigh?

7 A. When was -- when the -- when you all came and
interviewed

8 me.

9 Q. In June of 1996?

10 A. I think so.

11 Q. Sound about right?

12 A. No, it was cold. It was before that, wasn't it?

13 Q. All right. You remember it being many months after
the
14 bombing?

15 A. Right.

16 Q. And do you remember telling the FBI agent at that
time that

17 the truck you saw was yellow?

18 A. Uh-huh.

19 Q. But it had no labeling on it. Remember telling
that?

20 A. He said that if I didn't remember the labeling,
then it

21 wasn't, you know -- that it -- that I didn't have to
say I did.

remember any

22 Q. Did you -- did you tell him that you did not

23 labeling on the truck?

what I

24 A. It's been a long time. I guess. I guess that's

25 told him.

12200

Mary Martinez - Cross

remember

1 Q. Since the time you first talked to the FBI, you

2 that this truck had Ryder labeling on it?

3 A. Uh-huh.

you're now

4 Q. And where did you see this Ryder labeling that

5 telling the jury about?

6 A. Where did I see it?

7 Q. Yes.

8 A. On the trucks.

9 Q. On what part of the truck?

10 A. On the side of the truck.

a month

11 Q. Do you remember telling a defense investigator only

labeling on it,

12 ago that -- while you told the FBI there was no

labeling

13 you told the defense investigator a month ago that the

truck that

14 was on the front part of the truck, a portion of the

15 hangs over the top of the cab?

16 A. Yes.

17 Q. Do you remember telling him that?

18 A. Uh-huh.

19 Q. Has your memory changed since then? You now
remember it on

20 the side of the truck?

21 A. Well, I don't know. I guess I don't remember it
that well.

22 Q. Are you sure you remember labeling at all?

23 A. Yes, I remember some labeling, but --

24 Q. Do you remember telling the FBI that the driver of
the

25 Ryder truck had red hair?

12201

Mary Martinez - Cross

1 A. Had blondish-red hair.

2 Q. Did you tell him that he had light-red hair?

3 A. He had blondish-red hair, yeah.

4 MR. RYAN: May I approach, your Honor?

5 THE COURT: Yes.

6 BY MR. RYAN:

7 Q. I refer you to page 3 of this interview.

8 MR. THURSCHELL: Could you identify the 302
number?

9 MR. RYAN: Yes. It's the interview in --
excuse me,

10 ma'am, just a moment.

11 56120, page 3.

12 BY MR. RYAN:

13 Q. Would you read this paragraph, and I'm going to ask
you if

14 that refreshes your recollection?

15 A. "After seeing --"

16 THE COURT: No, to yourself.

17 BY MR. RYAN:

18 Q. Just to yourself.

19 A. Oh, I'm sorry.

20 Q. Just read that paragraph to yourself.

21 I'm going to ask you about the first four or
five

22 lines of the paragraph. Okay?

23 A. Oh, okay. I was reading the rest of it.

24 Q. Now, having read this FBI report, does that refresh
your

25 recollection that you told the FBI that the man had --
the

12202

Mary Martinez - Cross

1 driver had light-red hair?

2 MR. THURSCWELL: Object without the
additional word

3 in front of that expression.

4 BY MR. RYAN:

5 Q. "Very light-red hair." Does that refresh your
recollection

6 that you told the FBI that the driver had very light-
red hair?

7 A. Yes.

8 Q. And is that your recollection today; that the
driver had

9 very light-red hair?

10 A. Well, when I saw it with the sunlight, it was like
11 white-red, you know, blondish-red.

12 Q. And that's the only time you saw him?

13 A. Huh?

14 Q. That's the only time that you saw this man who was
driving

15 the yellow truck?

16 A. Uh-huh. That's the only time I've seen him.

17 Q. And you described that hair as being very light-red
hair?

18 A. Light-red hair, yes.

19 Q. Now, I want to talk to you a moment about the
passenger.

20 You say the passenger was standing up in the vehicle?

21 A. Well, he moved over to the -- to another position.

22 Q. And his head -- he didn't have to crouch down; his
head

23 completely cleared the top of the cab?

24 A. True.

25 Q. And did you conclude -- have you ever rented a
Ryder truck?

12203

Mary Martinez - Cross

1 A. No.

2 Q. Any type of a moving vehicle?

3 A. I rode in one once.

4 Q. And did you conclude based on what you -- what your
life

5 experiences are that person must have been very, very
short to

6 be able to stand up fully erect inside of the cab of a
Ryder

7 truck?

8 A. Well, one time I -- my car had a flat and an 18-
wheeler

9 came by and gave me a ride. It had a piggyback with
it, and I

10 got into that like an 18-wheeler truck; and I could
stand up in

11 it and there would be a little bit more extra room. I
wouldn't

12 hit my head, so . . .

13 Q. And is that what you saw on this morning, was an
18-wheeler

14 Ryder truck?

15 A. No. I saw the Ryder truck.

16 Q. Was it an 18-wheel truck?
17 A. No, it wasn't 18-wheeler.
18 Q. In any event, the truck you saw, the man was able
to stand
19 fully erect inside the vehicle?
20 A. Yes.
21 Q. And this man you've described before as being 140
to
22 150 pounds. Is that correct?
23 A. Okay. Yes.
24 Q. And you've described him as having a black
mustache?
25 A. I don't remember anymore.

12204

Mary Martinez – Cross

1 Q. You described him as having black hair to the
shoulders?
2 THE COURT: Are you asking about on a prior
occasion?
3 MR. RYAN: Yes. I'm sorry, your Honor.
4 THE COURT: All right.
5 BY MR. RYAN:
6 Q. Have you said in the past that the passenger inside
the
7 Ryder truck had a black mustache and black hair to his
8 shoulders?
9 A. According to that that you showed me, yes, I said

that.

10 THE COURT: No, you're being asked what you
remember

11 now --

12 THE WITNESS: I don't remember it now.

13 THE COURT: No, listen, please. What you
remember now

14 saying on a prior time, not just what you read but
whether you

15 remember saying this before, the things that Mr. Ryan
is asking

16 you. Do you?

17 THE WITNESS: No, I don't remember.

18 MR. RYAN: May I approach, your Honor?

19 THE COURT: Yes.

20 BY MR. RYAN:

21 Q. I'm going to refer you to page 3. It's the same
302.

22 Beginning with "however," if you'll just read that to
yourself.

23 A. Okay.

24 Q. Thank you. Now, Mrs. Martinez, did you tell -- has
this

25 refreshed your recollection as to what you told Special
Agent

12205

Mary Martinez - Cross

1 Gary Witt in 1996 when you were first interviewed by

the FBI?

2 A. Yes.

3 Q. Do you now recall that you told the FBI agent at
that time

4 that this man weighed 140 to 150 pounds?

5 A. Yes.

6 Q. And that he had a black mustache that was cut
straight and

7 not curled at the sides?

8 A. I don't even remember anything about -- about
talking to

9 him, you know, as to what specifically I said. I don't
10 remember what he looked like.

11 Q. And so you have no recollection of telling the
agent at

12 that time that the passenger had black, bushy hair that
was cut

13 just above his shoulders?

14 MR. THURSCHELL: I'm going to object. Asked
and

15 answered.

16 THE COURT: Overruled.

17 THE WITNESS: Excuse me. What did you ask
again?

18 BY MR. RYAN:

19 Q. I asked you if you have a recollection, Mrs.
Martinez, of

20 telling Special Agent Gary Witt in 1996, the passenger
in the

21 Ryder truck had black, bushy hair that was cut just

above his

22 shoulders.

23 A. I think that's what I described back to him again
when he

24 came; that he was medium-built, had a black-leather
coat on and

25 white T-shirt and blue jeans.

12206

Mary Martinez – Cross

1 Q. You described -- or I think you told us on direct
2 examination that you were in some type of a minivan.

3 A. Right, in my Windstar.

4 Q. Windstar minivan. And across the intersection you
could
5 see the passenger's clothing?

6 A. The passenger? Yeah.

7 Q. And you described his coat and his shirt and his
pants.

8 A. Right.

9 Q. Now, you have told us today that the man you saw
driving

10 the vehicle was Timothy McVeigh; is that correct?

11 A. Yes.

12 Q. And do you recall that on October 17, 1997, you
were

13 interviewed by a H. C. Bodley, an investigator employed
by the

14 Nichols defense team?

15 A. Uh-huh.

16 Q. Remember that?

17 A. Yes.

18 Q. And do you remember telling Mr. Bodley
approximately a

19 month and a half ago that you could not swear that the
man you

20 saw in the truck was Tim McVeigh?

21 A. I've never seen him -- what do you call it -- now,
after I

22 saw him that day. I mean person to person. I've never
seen

23 him. Just in -- in pictures and in the movie -- in the
TV.

24 Q. You realize you're under oath?

25 A. Yes.

12207

Mary Martinez - Cross

1 Q. And everything you say, you're swearing to today.

2 A. Yes.

3 Q. And my question is did you say to Mr. Bodley a
month and a

4 half ago that you could not swear that this man you saw
in the

5 Ryder truck was Timothy McVeigh?

6 A. Yes, because I haven't seen him in person.

7 Q. So you're -- excuse me. I didn't mean to interrupt
you.

8 A. I'm sorry. Go ahead.

9 Q. So you're not telling this jury that you know the
man you

10 saw was Timothy McVeigh, are you?

11 A. Right. Because I haven't seen him in person here.

12 Q. Now, the location that you showed us on the diagram
of

13 where you had the sighting of this yellow truck with
the two

14 men in it, you said was at Chesnut Street and
Washington?

15 A. Yes.

16 Q. And how far is that intersection from 6th Street
and

17 Washington?

18 A. I don't know.

19 Q. I'm sorry. I couldn't hear you.

20 A. 6th Street and Washington?

21 Q. Yes, ma'am.

22 A. Let's see. Chesnut, then 1st Street, 2nd Street --
about

23 six, seven blocks.

24 Q. And there is a Ryder dealership right there at 6th
and

25 Washington -- isn't there -- the hardware True Value?

Mary Martinez – Cross

1 A. The True Value, yeah. There is a True Value there.

2 Q. And there is a Ryder dealership at that location?

3 A. On the other side, yeah. On the other side.

4 Q. About six blocks from where you were?

5 A. No. You have to go up Washington to 6th, then you
have to
-- and
Ryder
8 things are at.

9 Q. How far were you from that Ryder dealership when
you had
10 this sighting of this yellow truck with two men?

11 A. I was seven blocks and then eight blocks.

12 THE COURT: I'm going to have to interrupt
this. I
13 have to take a recess at this point.

14 You may step down.

15 Members of the jury --

16 You may step down.

17 We're going to take our usual noon recess. I
hate to
18 interrupt the testimony of a witness, but I've got to.
We'll
19 recess till 1:40; and again, of course, the usual
cautions and
20 conditions: Avoid discussion of the case, anything

about what

21 you're seeing or hearing or have seen and heard, and
continue

22 to avoid anything outside the evidence that could
influence you

23 in your decisions.

24 You're excused till 1:40.

25 (Jury out at 12:10 p.m.)

12209

1 THE COURT: We'll be in recess.

2 (Recess at 12:10 p.m.)

3 * * * * *

4 INDEX

Page 5 Item

6 WITNESSES

7 Eldon Elliott

8 Direct Examination Continued by Mr. Woods
12055

9 Cross-examination by Mr. Mearns
12077

10 Redirect Examination by Mr. Woods
12086

11 Raymond Rozycki

12 Direct Examination by Mr. Woods
12089

12099	13	Cross-examination by Mr. Mackey
12101	14	Redirect Examination by Mr. Woods
	15	John Davis
12103	16	Direct Examination by Mr. Woods
12122	17	Cross-examination by Mr. Mackey
12146	18	Redirect Examination by Mr. Woods
12151	19	Recross-examination by Mr. Mackey
	20	Richard Reyna
12153	21	Direct Examination by Mr. Tigar
12156	22	Cross-examination by Ms. Wilkinson
12163	23	Redirect Examination by Mr. Tigar
12165	24	Recross-examination by Ms. Wilkinson
12167	25	Redirect Examination by Mr. Tigar
12210		
	1	Dale Carlson
12170	2	Direct Examination by Mr. Neureiter
	3	Voir Dire Examination by Mr. Orenstein

12175

12176 4 Direct Examination Continued by Mr. Neureiter

12177 5 Cross-examination by Mr. Orenstein

12178 6 Redirect Examination by Mr. Neureiter

7 Harry Herbel

12180 8 Direct Examination by Mr. Neureiter

12185 9 Cross-examination by Mr. Orenstein

10 Mary Martinez

12186 11 Direct Examination by Mr. Thurschwell

12197 12 Cross-examination by Mr. Ryan

13 PLAINTIFF'S EXHIBITS

14	Exhibit	Offered	Received	Refused	Reserved
Withdrawn	15 1629	12144	12144		

16 DEFENDANT'S EXHIBITS

17	Exhibit	Offered	Received	Refused	Reserved
Withdrawn	18 D1652A	12053	12054		
	19 D1707-D1708	12076	12077		
	20 D1730	12094	12094		
	21 D1738	12109	12109		
	22 D1739	12106	12106		
	23 D1759	12175	12176		

24

* * * * *

25

12211

1

REPORTERS' CERTIFICATE

transcript from

2

We certify that the foregoing is a correct

Dated

3

the record of proceedings in the above-entitled matter.

4

at Denver, Colorado, this 3d day of December, 1997.

5

6

7

Paul Zuckerman

8

9

Kara Spitler

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25